THE FEDERAL REGULATORY BURDEN

ROUNDTABLE DISCUSSION

BEFORE THE

SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

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ROUNDTABLE ON THE FEDERAL REGULATORY BURDEN

TUESDAY, MARCH 4, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT,
Washington, D.C.

The subcommittee met, pursuant to call, at 2:05 p.m. in Room 2360, Rayburn House Office Building, Hon. Edward Schrock [chairman of the subcommittee] presiding.

Chairman SCHROCK. I think we will go ahead and get started. There are some that are not here yet. They certainly cannot blame it on the weather, but in the interest of time, because I want to spend as much time hearing what is on your mind as possible, I would like to call this meeting to order and, first of all, to thank you all for being here.

This is a very important subject to me. I think if there is one thing I have heard in the two-plus years that I have been in Congress, it is the unnecessary government regulation, not only at the federal level but the state level, that absolutely impedes business doing what they are supposed to do, and that create jobs for hard-working Americans, and I am kind of tired of what I am hearing out there, and we need to do something about it. We need to get some of this stuff under control, and hopefully you all are going to be able to help me with this.

I am honored to be the chairman of this Subcommittee, and if there is any Subcommittee that I really am happy to have, this is the one because of there is one person who believes more in limited government than me, I do not know who it is. That is going to be my goal.

I really look forward to working with you all as we address the immense regulatory burden affecting small businesses. Countless efforts to reform and rein in overreaching regulators have met with increasing resistance from the government bureaucracy, even when it is in the hands of a small business-friendly administration.

This is the second roundtable we have hosted, and I hope to take from both of these events some priorities for the 108th Congress for this Subcommittee. In a time when our economy relies so greatly on small businesses to keep our country moving, we cannot afford to stifle that progress by continuing to pile on costly regulation that disadvantage these businesses. Half of our national work force is employed by small businesses, and two-thirds to three-fourths of net new jobs are created by small business. Now is the time to do

everything in our power to limit the reach of the regulators and lower the cost of regulation to small businesses.

[Mr. Schrock's statement may be found in the appendix.]

Chairman SCHROCK. I look forward to hearing from you all today. I ask that you hold your opening statements to three minutes, if you can, so that would give us more time for lively discussion afterwards, and I think we will just go right ahead, and I will recognize our first witness, Don Huizenga of the American Foundries Society, for his opening remarks. Thanks for being here.

STATEMENT OF DON HUIZENGA, PRESIDENT AND CEO, KURDZEL INDUSTRIES, ON BEHALF OF THE AMERICAN FOUNDRIES ASSOCIATION

Mr. HUIZENGA. Chairman Schrock and members of the Subcommittee, I thank you for holding this roundtable and providing the opportunity to share important information about the regulatory challenges facing our domestic metal-casting industry.

My name is Don Huizenga, and I am president and CEO of Kurdzel Industries. I am here on behalf of the American Foundries Society, AFS, where I served as the president last year. I have submitted a formal statement for the record that provides detailed information about the American Foundries Society and the metal-casting industry.

There are two important points of interest that I would like to share with you before I discuss the most significant regulation facing American foundries. The U.S. foundry industry is comprised almost entirely of small businesses where 95 percent have under 500 employees and qualify as small businesses for regulatory purposes. More importantly, though, 80 percent have fewer than 100 employees, and nearly one-third operate with less than 20 employees.

Most of the people around this table represent industries that exist because of metal castings. Also, I want to be clear that AFS supports reasonable and feasible rules and standards that achieve the goals of a clean environment and safe work place.

Today, I would like to briefly discuss the iron and steel foundry MACT. This draft rule was proposed two days before Christmas, and the public comment period ended about two weeks ago. This rule, if finalized as written, could decimate the foundry industry as we know it today. At a minimum, foundry closures and consolidations are likely. This is particularly sobering news for the Department of Defense, which is relying on the domestic foundry industry to arm our military.

There are several flaws associated with this rule and the regulatory development processes EPA went through. These are explained in more depth in my written testimony and include, number one, the underestimation of costs and small business impacts; number two, the development of standards that are inappropriate—by that, I mean technically or economically infeasible and potentially unsafe in one case; the lack of industry knowledge by regulators currently involved in the process, with EPA losing staff critical to this rule at a crucial point in its development; and, lastly, based on the above issues, we feel unreasonable time constraints were put on the process.

Let me briefly discuss each point. Regarding underestimated costs, EPA estimated the rule would have an annual cost impact of roughly $27 million. AFS estimates are closer to $300 million. The EPA's figures were compiled by contractors who routinely perform services for the agency. The industry's figures were compiled by environmental and facilities engineers, who propose, install, and operate these same control systems and really understand the intricacies of the stated requirements.

For example, one of the standards in the rule would require half the regulated facilities to replace current control devices with newly prescribed equipment at a cost exceeding $2 million each. EPA not only underestimated the size of the new bag houses but neglected to consider that new duct work and fans would be needed to support the larger air flow, and the energy usage would increase as well.

For one of Kurdzel's foundries, the control equipment costs were $3 million versus $2 million by the EPA, and retrofit costs were three times their two times EPA projected, making the total capital and installation costs for us at one facility $9 million versus the EPA's projected $4 million.

Miscalculations like this are consistent throughout the agency's assessment and helped explain the different cost assessments between the AFS and the agency. There are also significant hidden costs associated with this rule, with inspections, monitoring, reporting, and record keeping. Even the agency's costs, which have been low, are projected to be $39,000 per ton of HAP removed on an annualized basis.

Most critical is that, as a result, EPA certified that this rule would not be a significant regulatory action, therefore, blocking further analysis of less-burdensome alternatives to the approaches in the proposal.

A.F.S. is challenging EPA's economic assessment, requesting that EPA undertake the necessary evaluation of regulatory alternatives and seek OMB review.

Number two, underestimated small business impact. AFS asserts that a number of small businesses that would be impacted by this rule is more than twice the number estimated by EPA. The impact would, indeed, have a significant impact on a substantial number of small foundries. Our foundry is a small business and will be hit hard by the requirements of the rule. As stated, we have estimated an initial cost of eight to $9 million just to convert a single piece of equipment required by one rule at one of our plants. This does not take into account the numerous additional standards and requirements imposed on many other aspects of our foundry.

This is a pound of Lowry's salt. That costs $2.99. To collect one pound of metal HAPs, hazard air pollutants, it will cost us $19,000, based on the initial cost of installing new equipment. The price of gold is $5,600 a pound. That gives you an analysis comparison of what we are talking about. This is ridiculous. It does not make a lot of sense.

A.F.S. is challenging, as a result, EPA's small business assessment and requesting a panel to identify less-burdensome alternatives to reduce the impacts on small business.

Technically and economically infeasible standards. In many cases, these rules are not appropriate for the foundry industry where costs are so excessive to achieve compliance that the requirements cannot be justified. For example, the requirements to install collection on metal pouring stations at the mandated face velocity requirements equates to a cost of $4,144,344 per ton of HAP metals collected, based on annualized cost information supplied by the agency. The same requirement may hinder additional MACT requirements for lighting off mold vents, again, absurd, but once more only addresses one example of one requirement to one specific area in our foundry.

As I indicated, some of these requirements are unsafe or dangerous. Required manual light-off of each and every mold is putting staff assigned to this task in danger of attempting to comply with this law.

E.P.A. lacks the knowledge of our industry. AFS has invested time and resources for over 10 years, working closely with the agency, to educate EPA staff on foundry processes and the industry as a whole. These efforts have included plant tours, numerous meetings, a Foundry 101 class for EPA staff and contractors, and submission of a variety of technical information on the industry. Unfortunately, the project manager for our MACT, from its inception 10 years ago, retired a year before the proposal was published. Likewise, his immediate supervisor, also involved since Day One, retired three months prior to the proposal. As a result, six months ago, we were faced with a brand-new staff that were not familiar with our industry and had no institutional knowledge of our rulemaking. To compound this, the process was at a point where language could not be shared or distributed by the agency prior to the draft being published.

The problems resulting from the staff change manifested themselves in the form of standards that were abandoned years ago being reintroduced in this rule and the inclusion of additional requirements that do not fit foundry practices.

Time constraints. We recognize we have been working with EPA on this rule for over 10 years, so claiming no time may seem unreasonable. However, because of the staff changes and the need to revisit many issues that were resolved by previous managers, accelerating this MACT to be completed by any due date other than the last one is not appropriate. We have pointed this out to the agency as well.

Simply stated, the new staff was not allowed sufficient time to understand the intricacies of the industry and the rule under development.

In conclusion, AFS appreciates the opportunity to share our views with you today, and we do look forward to the opportunity to work with you to further improve the federal regulatory process and the rule developed from it, and I talked as fast as I could, Congressman. Thank you very much.

Chairman SCHROCK. Thank you. Harry Alford from the National Black Chamber of Commerce, we are delighted to have you here today.

STATEMENT OF HARRY C. ALFORD, PRESIDENT/CEO, NATIONAL BLACK CHAMBER OF COMMERCE, INC.

Mr. ALFORD. Thank you, Mr. Chairman. I am delighted to be here. I have a written statement, and I will hold my comments to my three minutes, hopefully.

The big problem is being in the past. We had an Office of Advocacy that was set up under the Regulatory Flexibility Act of 1980. Then it was reinforced with SBREFA, Small Business Regulatory Enforcement Fairness Act of 1996.

The big problem had been that previous administrations did not allow the Office of Advocacy to do its job. We have an administration today that values the Office of Advocacy, and through enforcement of those two laws and through Executive Order 13272, which requires the Office of Advocacy to teach compliance with those two laws to all of the agencies, we have seen a great breath of fresh air, and the small business community is, indeed, delighted with the new focus and the new vigor that the Office of Advocacy is having.

In addition, there has been a new position at the SBA known as the Ombudsman Office of the SBA, and currently the ombudsman is holding hearings throughout country soliciting views and opinions of regulatory fairness or unfairness. I know many of our constituents participated in the two hearings in Kansas City, Missouri, and here in Washington, D.C., just about two weeks ago. It is touring around the country, and I think that is going to be very helpful.

We have had bad times in the late–1990's. We had an EPA that was forcing regulation down our throats. The NAAQS, National Ambient Air Quality Standards, and Title VI enforcement of the Civil Rights Act; they were running roughshod. They were onerous, and the courts in our advocacy stopped them in their tracks.

We plan, now that we have good times, we plan to cooperate with the U.S. Chamber of Commerce in supporting their new Institute for Sound Regulation, which will have an oversight impact on the new regulations as they come out. Also, we will follow the Data Quality Act, which says that any new laws must require agencies to use sound science and statistics to support agency regulations and policy. Using half of the science and cherry picking the data can no longer be accepted. Too bad that was not around a few years ago.

There is also, despite that we have got new legislation, we have got reinforcement, we have got a good committee here in Congress, and everybody has joined in to make sure that the field is level for small business. There is still some outside activity, what I call "slick injection," and one is there was a lawsuit by the Forest Conservation Council and the Friends of the Environment versus the SBA, and they were suing the SBA for granting 7[a] loans out in suburban Virginia here, saying that it was going to have an adverse impact on the environment. It was too much pro-sprawl.

To our shock, we, the National Black Chamber of Commerce and the Small Business Survival Committee, had to forcefully interject ourselves into this lawsuit because SBA was going to settle with these two environmental groups and require small businesses who were going to take out loans in suburban Virginia to get certificates from various EPA agencies up and down the Mid-Atlantic to get

the certificates to show that there would be no negative impact on the environment by them putting up an apartment building or a 7-Eleven store.

It was not going to happen. The common business person was not going to be able to go through all of that routine. So, in effect, the 7[a] loan program was going to just stop in its tracks. So far, we have been successful in arguing it in the court, and hopefully the SBA will not settle this matter for the position of the environmental groups.

So vigilance is the key; cooperation and coalition building amongst all of our groups, and a good working relationship with Congress. We look forward to the 108th Congress being a friend of ours.

[Mr. Alford's statement may be found in the appendix.]

Chairman SCHROCK. Great. Thank you, Harry. Rob Green from the NRA, and that means National Restaurant Association. We are glad to have you here, too.

STATEMENT OF ROB GREEN, DIRECTOR OF WORK FORCE POLICY, NATIONAL RESTAURANT ASSOCIATION

Mr. GREEN. Thank you, Mr. Chairman. I appreciate that. I am the director of work force policy with the National Restaurant Association, and thank you very much for holding this roundtable. We think it is an excellent opportunity to get everybody together and talk about priorities.

We share a lot of concerns and priorities of folks around this table, and today I just want to talk about three specific ones. Before I do that, I just want to indicate that seven out of ten restaurants employ fewer than 20 employees, and fully 92 percent of restaurants have fewer than 50 employees, so we are truly a small-business industry, and I know you know that very well, and I appreciate that.

Chairman SCHROCK. I live in Virginia Beach, and there are hundreds and hundreds and hundreds of restaurants.

Mr. GREEN. Yes, and we want to make sure that number grows.

Chairman SCHROCK. I do, too. I do, too, in Virginia Beach. Let us make that clear.

Mr. GREEN. Absolutely for the record. The three issues today I want to talk about are the Section 541 regulations, white-collar regulations, being put forward by the Department of Labor. The second issue are some technical rules implementing the Americans with Disabilities Act, and the third issue is FDA prior-notice rules dealing with importation of food.

The first issue as an issue that has been a longstanding concern to the restaurant industry. That is classification of employees and who qualifies for overtime. The current regulation which govern the issue were last updated in 1954, and, in fact, a large segment of the restaurant industry did not even exist in 1954, and that is the quick-service segment, or fast food, as we commonly know it.

So we are very enthusiastic that the Department of Labor is taking time to review these regulations, and basically they say that anybody in an administrative, professional, or executive capacity is exempt from overtime. Now, the trouble is how do you determine who is exempt and who is nonexempt, and for restaurants where

managers really do everything there is to do in an operation—they roll up their sleeves, and they are working the front of the house, the back of the house—it is a challenge to try to determine a day-to-day responsibility of a manager and an assistant manager, so many small businesses who do not have human resources departments have really run afoul of the existing regulations, and there are a lot of class-action lawsuits which have come into play in recent years, and there is multimillion-dollar liability exposure that can occur.

So we are very enthusiastic that the department is very close to issuing proposed regulations, hopefully in the next month or so. Restaurant industry priorities include clarifying and simplifying the existing regulations so a small business can really understand whether or not they are in compliance; secondly, recognizing unique features of restaurant management—the multitasking is one issue which we are focusing on; and ensuring that the salary thresholds for determining exemptions are fair to the restaurant industry, and our managerial salaries tend to be a little lower than some other industries, so we want to make sure that the department recognizes that. And we are hopeful that when these regulations are issued in draft form, we will be able to comment, and we will be working with the Subcommittee to let you know of any concerns we might have.

The second issue deals with some technical rules implementing the Americans with Disabilities Act, and there is something called the U.S. Architectural Transportation Barriers Compliance Board, which is an independent entity that looks at access issues under the ADA. They set out proposed guidelines in 1999 which include accessible kitchen designs for persons with disabilities, and that really impacts the restaurant industry, and our concern is that they really did not look at the costs of both altering existing kitchens and also for new construction, what that cost will be, particularly on small business.

So we petitioned the access board, as it is known, to look at changes to that, working with other groups in this room and others around the table, including SBA. We feel we have made some headway, but I think the decision now rests with the Department of Justice, and that should be coming very shortly. So if a decision is reached that is still unfair to the industry, we will probably be in touch and want to work with you on that issue as well.

The third issue is relatively recent. Regulations were recently put forward by the Food and Drug Administration, as required by the Bioterrorism Act passed by Congress last year, and the issue is really what happens to imported food and how much prior notice does an importer have to give, and what we found for restaurants is that it could become a very big issue. We have a situation where all importers are required to give prior notice before imports are received, and the notice has to be given to FDA electronically, and it has to be no more than five days preceding the goods' arrival or no less than 12 noon on the day before shipment arrives. But if you are a restauranteur who is looking at a catch of the day or a small shipment from Canada or Mexico, it becomes very problematic to try to anticipate what is going to be in a shipment, particularly seafood, cheese—wine is issue.

In the restaurant industry, we deal with very small shipments, usually for very short periods of time, again, for menu specials on a week-to-week basis, for one-time events, for catering, and the like, and we see a potential here where each small restauranteur becomes an importer, and the requirements that are listed by these regulations in terms of information required are very onerous. So there is a lot of paper work, and the on-line aspect is very troublesome as well because if you have a network problem, a server problem, even within your own small business, you could automatically trigger a delay in receiving your shipment. When it is fresh fish or perishable food, it can really become a big, big problem, and if you are importing wine from Italy, let us say, and you are buying something on the Internet, it is an interesting process.

So we look forward to filing comments in the next month or so and trying to work with you and your staff, Mr. Chairman, on addressing this issue if it needs to be addressed, and thank you very much.

Chairman SCHROCK. Thank you. Thank you very much. Bill Mahorney from the ABA, which you might think is the Bar Association. It is not. It is the American Bus Association. We have too many acronyms in our federal government, but we are delighted to have you here, too.

STATEMENT OF BILL MAHORNEY, DIRECTOR OF SAFETY AND REGULATORY PROGRAMS, AMERICAN BUS ASSOCIATION

Mr. MAHORNEY. Thank you, Mr. Chairman. I appreciate the opportunity to be here and speak to you about some issues that are of interest to our membership. As you said, I am Bill Mahorney. I am the director of safety and regulatory programs with the American Bus Association.

We are a national trade association of the inner-city bus industry. We have about 850 members who actually operate buses, and that is from Greyhound down to the bulk of the industry, which has less than 10 buses, a lot of charter and tour. In fact, of the 4,000 bus companies that are in the continental United States, 90 percent of them have less than 10 buses, so we really are an industry made up of small businesses. We also have about 3,500 members of our association who support the travel and tour industry, hotels, motels. I think we probably at this table have a lot of common members.

Since time is short, I am just going to highlight a couple of issues and mention some others very briefly. One of the things that has really affected some of our members, especially our smaller members, is competition from transit companies. Private motor coach companies face increasing competition from federal-subsidized transit agencies, against the regulations put forth by the FTA in Section 604. Basically, the regulations say if there is a private company that is willing and able to do it, you will not compete, and to do that, they would need to send a notice to us and to another motor coach association, the United Motor Coach Association, so we can notify our members, so if one of our members wants to bid on that job, they can. That does not always occur.

The federal regulations do attempt to limit this public sector competition, but there are a lot of loopholes. When we have these

problems, we lose a lot of contracts, we lose a lot of our charter business, and a result of that is a lot of our smaller companies do go out of business, and then there is no service in some areas at all because some of the transit will not go in certain areas, but some of the charter businesses they are losing helps keep them afloat.

Some of the things we would like to see, and I would like to say that we have had a very good relationship with Jenn Dorn at the FTA at this time. They have been very supportive, and her general counsel, Will Sears. We have had a lot of our companies that have been challenging some of the transit companies who have been providing this illegal service, and we have gotten some very good support from Ms. Dorn, and we are very appreciative of that.

Chairman SCHROCK. In the form of what?

Mr. MAHORNEY. Well, they have ruled in our favor, in favor of our members. They have supported the regional administrator's decisions and basically, even through appeals, have, in fact, upheld the charter rules, which we are very, very appreciative of.

What we would like to see from a regulatory standpoint is we would like to see clarification and strengthening of transit-competition rules that would include a stronger definition of charter service. In fact, we would like to see statutory language. Currently, it is just regulatory language, and we would like to have a prohibition against public transit agencies operating beyond their urban area.

We would like to see stronger penalties for violations of the transit-competition rules, including compensatory damages. The appeals process, even the appeals that we have won; they take enough time where a small company is still taking an incredible beating, so we would like to see those moved along at a faster pace, and also if there would be something to make the operator whole after a transit agency is found to be in violation.

We would like to create an ombudsman at the FTA for private operators and an auditing mechanism to resolve some complaints without long and costly proceedings between the parties. We think that would help quite a bit.

We would like to see the creation of a bus and rail passenger advisory committee to promote discussions between the modes and advise the secretary of transportation on how to best promote the industries because we do think that there are a lot of opportunities for us to work together as well.

We would also like to establish a pilot program for bus and van parking and providing grants to transit agencies to encourage them to make their parking facilities available for private motor coach operators during peak hours where practicable. In D.C., it is a huge issue. We have no place to park, and if we could use some of their parking spaces when they are open, we think it would really help us out quite a bit.

The second issue is hours of service of drivers. There is currently a final rule that is at the OMB that we still have some concern about. We are concerned that motor coaches may be included in the rule, to the detriment of the industry and to the traveling public. We do not know if that has occurred, but we still have quite a bit of concerns.

The rule change purports to increase the safety of commercial motor vehicle drivers by preventing fatigue, but any inclusion of our industry, we think, will have the opposite effect. The rule is a truck rule, at least it was the last time. We are very anxious to see how it comes out this time, but some things we would like to make really clear is there is no evidence or science to support changing the hours-of-service rules for our industry. There might be for trucks, but for buses there is really no evidence or science. It has never been studied.

In fact, we did a study. We commissioned a study from the University of Michigan Transportation Research Institute that showed that there was one fatigue-related fatality every two and a half years in the bus industry, and that is using the Forrest data. That is using the same data that DOT uses.

The thing that was most disturbing to us at the time in the May 2000 proposal was, and I quote, "for purposes of this proposal, the FMCSA has assumed that bus drivers operate in ways similar to the truck drivers," and that is simply not the case. What we would like to do is be separated out from that rule, and if they want to address us, address us separately. Do the research. We will work them, and we will see, number one, if there is a problem, and, number two, if there is a problem, how we can address it from a bus standpoint, not from a truck.

There are several other regulatory issues that affect our small businesses that I will just mention. Americans with Disabilities Act compliance; we need more funds. The Transportation Research Board has said we need about $40 million a year to comply. We are getting about seven. So that, we would like to see about three to four times as much money in that program because putting a lift on a coach costs about 35 to $40,000.

We are concerned still about the low-sulfur, diesel-fuel requirements. We are concerned about cost and availability.

We would like to see more research in the motor coach end. There has been a lot of talk of seat belts and that type of thing. NTSA has never crash tested a bus, and we would like to see them do it. We would absolutely like to see them do it. The reasoning has been that there is not enough of a safety problem within the motor coach—it is a two-edged sword. We are glad we do not have a safety problem, but if they are going to address the vehicle itself, the only way to do it is through crash testing, and unfortunately they need a lot of money to do that, so that is something we have asked Congress to provide NTSA with the funds they would need to crash test some motor coaches and make some decisions on not only seat belts but on window design, roof design, et cetera.

We also want to make sure that there is a safe and fair implementation of NAFTA in a full reciprocity with Mexico as we go across the borders.

Just one last thing I would like to mention, even though this is a federal forum, our members have been increasingly affected by individual state regulations that conflict sometimes with federal law. We have recently had an example of this in Illinois, which passed a law requiring anyone who transports Illinois school children to possess an Illinois school bus driver permit.

The law makes no provision for out-of-state drivers to obtain this permit and thus prevents them from transporting Illinois school children at all. This effectively prohibits carriers in neighboring states from doing that business within the state, and we have a lot of members who are losing tens of thousands of dollars in this. We think this is not only a violation of the commerce clause of the Constitution, but it also conflicts with the spirit of the commercial driver's license program.

Mr. Chairman, we certainly appreciate the opportunity to speak to you on these issues, and I do have some additional information that I would like to submit for the record on some of these issues.

Chairman SCHROCK. Thank you, Bill.

Mr. MAHORNEY. Thank you very much.

Chairman SCHROCK. My whole life, especially the 24 years that I served in the Navy, I never believed that government should compete unfairly with commercial enterprise. That is something we always try to do. They do it. They do it a lot, but it just does not make sense. They do not have the infrastructure. They do not pay the taxes. You guys do, and that is something that needs to be kept in check. There is no question about that.

Mr. MAHORNEY. I appreciate that. You know, we feel that we can definitely do it cheaper, without a doubt.

Chairman SCHROCK. And better. Whenever the government gets in it, need I say more?

John Herzog. He is from the Air-conditioning Contractors of America, and we are glad to have you here, too.

STATEMENT OF JOHN HERZOG, AIR-CONDITIONING CONTRACTORS OF AMERICA

Mr. HERZOG. Thank you, Mr. Chairman. I appreciate it, and we are going to address our comments—we agree with a lot of the other things that small business folks are talking about, but we are going to focus on just four specific things that primarily affect our members, and they affect everybody in this room because you all benefit from the air conditioning and heating that our members provide, and you would not be happy if they were not there.

We actually want a new regulation, and I will explain why. We recommend extending the licensing requirement for purchasing refrigerants used in air-conditioning and heating equipment to include hydrofluorocarbons, which are call HFCs. Under the Clean Air Act, the older generation of ozone-depleting refrigerants are being phased out. The new generation are these HFCs I am talking about. They do not deplete the ozone layer.

However, as with the older generation of refrigerants, there is still a strong argument to keep HFCs out of the hands of nonskilled, untrained, and noncertified consumers. Under the EPA, anybody that handles the older generation, and there is still a lot of those CFCs and HCFCs out there, has to be certified. If these people who are not skilled and not certified have access to these new refrigerants, they are going to be injured because the new refrigerants operate under much heavier pressure than the old ones, systems will be ruined, and refrigerants will be mixed so they cannot be reclaimed and, therefore, must be destroyed. This not only costs money and wastes resources, but it increases the likelihood

that refrigerants will be illegally vented into the atmosphere. As a greenhouse gas, unregulated HFCs have a higher global-warming potential than the regulated gases that they are replacing.

Next, we recommend changing the FTC regulation regarding door-to-door sales transactions. The purpose of the three-day right of rescission is to protect unsuspecting people from door-to-door, scam salesmen. Unfortunately, it also captures our members in this net and plumbers and electricians. Although our members are not door-to-door sales operations, because they do the work in the home, often in an emergency situation, they fall under the same requirement.

The solution, we think, is regulatory relief when the customer initiates the contact. When your air-conditioning system goes down, and you call somebody to your home, the three-day right of rescission presents a real problem for our members because you can wiggle out of it after they have done the work.

We also recommend giving specific authority and directions to the FTC to prevent unfair competition by a public utility and its unregulated affiliates. The Public Holding Utility Act is the only barrier to cross-subsidization between monopoly utility holding companies and their unregulated affiliates, yet the Senate included repeal of PHUA in last year's energy bill, and it will probably be done again this year.

Many utility holding companies subsidize unregulated affiliates at the expense of consumers, including many small businesses with whom they compete. We do not fear the competition. What we fear is unfair competition, exactly what you were just talking about.

The FTC approach is an alternative, equitable solution that overcomes most of the objections on the other approaches we have tried over the last five or six years we have been fighting this. We think it is a good way to do it. The FTC Reauthorization Bill came up last year in the Senate, and it should be brought up again this year.

Next, we seek regulatory relief under Section 280(f) of the tax code for trucks and vans used in businesses. We propose new guidance that focuses less on the nature of the vehicle but more on how it is used. It should also allow new vehicles into the category that is currently vans and trucks without regard to weight limits, allow business owners to apply Section 179, expensing, to these vehicles, raise the dollar cap to more realistic levels, and shorten the depreciation time.

Finally, we support the secretary of labor's plan to reduce musculoskeletal disorders through industry-specific, voluntary guidelines and urge Congress to allow this program to proceed, withholding consideration of legislation establishing a mandatory national standard until the science of MSD's cause and effect is clearly made.

Thank you for the opportunity. We look forward to helping you implement these changes.

Chairman SCHROCK. Thank you. Thank you very much. Mark Maslyn, we are glad to have you here. Mark is from the American Farm Bureau. Until recently, I did not have very many farms, and then they redistricted in our state, and now I have the whole Eastern Shore. It is all farms.

Mr. MASLYN. I am glad to hear that.

Chairman SCHROCK. Yes. I will bet you are. So I am learning real quick.

Mr. MASLYN.I am very pleased and would be happy to help you learn that.

Chairman SCHROCK. Great. Thanks.

STATEMENT OF MARK MASLYN, AMERICAN FARM BUREAU

Mr. MASLYN. Congressman, thank you very much for the opportunity to be here and for holding this hearing. I have included comment on a number of specific regulations in our written statement, and I am going to refrain from talking about those individually, and perhaps we can get into some discussion later on. But the fact that you did not have a lot of agricultural background; I would like to talk a little bit about farming today in the 21st century because it is different than what many people think.

First of all, the Farm Bureau is organized in 50 states and 2,700 counties, including the Territory of Puerto Rico. There are about two million farms in the country. About 80 percent of the food is produced on about 20 percent of the farms. The overwhelming majority of those farms are family-run businesses with assets in excess of a million dollars.

It is a highly technical, highly scientific, and highly computerized industry today. Computers run virtually every aspect of the farm, from production to management to marketing. Our tractors and other equipment are guided by global position satellites. We farm by the foot and the square inch as opposed to by the acre and the field.

Our markets today are international. We export about two-thirds of everything that we produce, so our competition does as well. The European Union, a very large market for agriculture, subsidizes its agriculture to the tune of about five times on a per-farm basis the amount that is subsidized in the United States. In addition to that, they have about 90 percent of the world's export subsidies.

The United States farmer is a low-cost producer. We are the best producers in the world. My point that I am getting to is that regulation, any time that you add costs to the bottom line, we become less competitive, and that is of real concern. In Japan, their domestic subsidies amount to $32 billion a year. They also have about six percent of the export subsidies. We are about $16 billion in subsidies, and we have less than a percent of export subsidies.

Regulations affect agriculture in many, many ways. The farm today is regulated far more by EPA than USDA. We are regulated literally by dozens of federal agencies, everything from USDA to EPA, the Fish and Wildlife Service, NOAA, the National Marine Fisheries Service, the Corps of Engineers—dozens of agencies, dozens of rules. We have a regulatory staff. Twenty years ago, we had two people that did regulatory work. Now we have a staff of 18 people, and most everybody does regulatory work, and about half of them do it full time.

Far more of our attention in the last eight years has been devoted on regulatory work than on legislative work. That is where all of the mischief comes. That is where the problems are.

Agriculture is a natural-resource-based industry, and, consequently, we have gotten to know the EPA all too well. Someone mentioned the international treaties and components. Recently, we have had an incidence where methyl bromide, a soil fumigant which was listed as an ozone depleter, is being phased out. By 2005, it will be phased out in this country. There are not substitutes. There are no alternatives for U.S. producers. If you grow tomatoes in Florida and strawberries in California, you have to have it.

What is unfair and what has not been talked about here today has been the international component. Some of the treaties that we are entering into, some of the international agreements, regulate the United States to a different standard.

Chairman SCHROCK. Say that again.

Mr. MASLYN. They regulate the United States producer to different standards than the international community. For example, on methyl bromide, the phase-out in the United States is in 2005. In the rest of the world and in the undeveloped world, in China, and in Third World countries, it is 2015. They are actually building plants to produce methyl bromide in those countries. We cannot compete without it, the United States, and yet those countries are building plants. They will be raising crops and sending those crops back into the United States. It is not a question of whether the product is safe for use in terms of food production; it is just that we are held to a different standard because we are a developed country, and in the very near future, China will surpass the United States in its use of methyl bromide.

That is one example, and I could give you many, many others in which the EPA in this particular instance has used information, and we have talked a little bit about the Data Quality Act and sound science, but there is a fair amount of dispute as to whether or not methyl bromide is seriously the problem that it was, and keeping in mind that most of the ozone depleters are naturally occurring, there is little difference in terms of the overall objective of researching the environmental goal set by the Montreal Protocol if you were to simply freeze the phase-out in the United States until an alternative was developed.

That is just one instance, and it is important, no matter what agency we are dealing with, that we have the best science and the best information available on these products, and we are not dealing with political science but real science. Just about every department and agency that we deal with, we run into the same problems. It is the credibility of data that the agencies are using. We are competing with oftentimes predetermined outcomes, particularly when it comes to the chemicals, the inputs that we use to make a living.

There are a number of other rules and regulations that we are dealing with right now. As I said, we have included them in our written statement. But they oftentimes will levy direct costs and indirect costs to us, and we are also faced with the problem of parallel regulations. Now, I worked in the state legislature in New York many years ago, and there is not a rule out there that the State of New York does not think that it can do better than the

federal government, and there is an opportunity to one-up what the federal government does, and that occurs in almost every state.

Farmers are oftentimes caught between what we do in our state capitals or in our county legislatures, particularly in the area of the environment. We all strive to be more protective of the public than the next individual.

I want to close and thank you for holding this, and we look forward to working with you. You do very good and important work here, and however we can help and assist you to carry out your goals and objectives of this Committee, we would be happy to do so. Thank you.

Chairman SCHROCK. Thank you. But we have got to do more than have hearings. We have got to rein these people in. There is a common thread through what we heard last week and a common thread what I am hearing today, and I will not mention the agency, but the initials are EPA. It just seems like they are out of control. Everything we do, it is EPA this, EPA that. So there is something really wrong there somewhere.

Giovanni Coratolo, who is with the U.S. Chamber of Commerce, thanks for coming.

STATEMENT OF GIOVANNI CORATOLO, U.S. CHAMBER OF COMMERCE

Mr. CORATOLO. Thank you, sir. Thank you very much for holding this roundtable. The important work that you are doing is certainly very important to the chamber also. The U.S. Chamber of Commerce represents 3,000 state and local chambers and has an underlying membership of roughly three million, 96 percent of which is small business, so regulation impacts us very highly.

With the U.S. Chamber of Commerce, obviously, we represent a very broad constituency, so as we reach out and embrace these thousands of regulations that descend upon us on a yearly basis, we have to look a little more broadly as to how we attack them, and certainly part of the way that the small business community makes sure that regulation is sensitive to the small business community is what I call "regulating the regulators," and a lot of this has been already said. We have to make sure that the body of legislation that is already on the books is followed through the agencies.

We have a whole history of very potent regulations, starting with the Reg Flex Act of 1980, strengthened by SBREFA in 1996; Paperwork Reduction, actually strengthened by a small bill that was passed last year, the Paperwork Relief Act. All of this has put a lot of requirements of the agencies on the books, and yet a lot of agencies tend to ignore this. They themselves cannot hold themselves responsible for the legislative regulations that bear upon them as they would like small business to adhere to their regulations.

So turnabout is fair play. If they expect small business to adhere to their regulations, they have to be an example.

Chairman SCHROCK. But you see, they are the federal government.

Mr. CORATOLO. Exactly, exactly.

Chairman SCHROCK. They think they do not have to.

Mr. CORATOLO. They are doing it for what they perceive as a better purpose.

Chairman SCHROCK. Justifying their existence maybe.

Mr. CORATOLO. We have seen ergonomics several years ago, which really threatened to sink the small business community, costing over $100 billion. We saw that that was killed by a little-known congressional-review act that was actually tacked onto SBREFA. So, I mean, things like that; there are tools there that we have to make sure that the agencies use, and even currently the Washington State has reversed its mandatory ergonomics rule and made it voluntary because they saw the errors of their ways.

So when we can enlighten agencies and make them more sensitive to the small business community when they do regulate, I think we a lot of times we can get along. I do not think there are any small businesses that want to violate or put in danger the health and welfare of their employees or the public. Obviously, they are not going to be in business too long.

Part of what we have heard today is certainly data quality. The chamber is very supportive of making sure there is sound science when it comes to regulation, make sure that science is transparent. Certainly, when they have a premise when they go into the regulation, we have to be able to look at that and make sure that it is based on sound science, and they are not just trying to determine the outcome, which in too many cases they are.

On the books right now, there is 610, Section 610 of SBREFA, where they are supposed to every so often review regulation and make sure that the underlying conditions are there. In fact, we had John Graham ask for regulations. Just to give you one small example, I submitted as part of that the sling rule, and here is a perfect example of how agencies tend to ignore small business. For years, we had a small business association that lobbied OSHA on this sling rule. It was a rule in which cranes and wire operators used to do slings for construction. The American Society of Mechanical Engineers had come up with a new standard that was safer, that provided less problems, that saved money, yet OSHA still followed this old sling rule. We said, look, the time has come to really look at this, examine it. Sometimes reviewing regulation is important, not just making new regulation.

Very integral to making this whole body of what I call the legislation to hold agencies accountable work is the Office of Advocacy. It plays an integral part in what we do in trying to make sure that small business is represented within the administration. Part of what we like to see is that office strengthened. Right now, they have no particular line item in any budget. It is done at the discretion of SBA. A certain line item—they are the only office that is able to have judicial review and critique other agencies within the administration on their rulemaking and also make them sensitive to the small business community.

We have heard Harry, and I sort of support his comments on the ombudsman. All of these particular areas go into orchestrating a cogent force in making the agencies adhere to what they should be doing in making the rules more sensitive to small business, and with that, I will submit some very detailed comments later.

Chairman SCHROCK. Great. Thanks. Your comment about the Paperwork Reduction Act; we heard that from folks last week as well. I think what happens up here, Congress passes legislation with this intent in mind, and the regulators just say, We will just interpret that any way we want, and Congress be damned. And they do it, and unfortunately they have gotten by with it. They need to be reined in and their feet held to the fire, and you need to keep pounding on them, and that is something we need to do. We passed the legislation. We need to make sure it is implemented correctly, and it is not.

Deborah White is from the Food Marketing Institute. We are glad to have you here. Thank you.

STATEMENT OF DEBORAH WHITE, REGULATORY COUNSEL, FOOD MARKETING INSTITUTE

Ms. WHITE. Good afternoon. Thank you very much for holding this roundtable and for inviting FMI to participate. I am regulatory counsel for FMI, and actually I was very interested in Mark's comment that he has got 18 people that are working on regulations. I am going to have to tell my boss that. He would love to have some more help.

Anyway, FMI, we have about 2,300 members. They are food retailers and food wholesalers now that we have merged with Food Distributors International. We have 26,000 retail stores, and that represents about three-quarters of the grocery store dollars in the country, but fully half of our membership are single-store operators, and we are an aggressively regulated industry.

People do not necessarily think of supermarkets as overly regulated, but we are aggressively regulated by the feds, the states, the locals. There are some 12 different food safety agencies alone, not to mention the Department of Labor and OSHA and the ergonomics issue that was brought up, and we certainly appreciate the work that was done with the Congressional Review Act. We were looking at problems. I think OSHA was proposing to limit how much weight could go into a grocery bag to 15 pounds. How are we going to get those 20-pound turkeys out of the store?

So we agree that it is very helpful that OSHA is working on voluntary guidelines, a guideline-type approach, and we certainly support that. We hope they have an opportunity to do something useful with that.

Chairman SCHROCK. Why was OSHA going to limit that to 15 pounds? Someone might strain their back lifting?

Ms. WHITE. That was part of the ergonomic standard that was out there, but there are some things in a grocery store that weigh more than that, so——

Chairman SCHROCK. Sure.

Ms. WHITE [continuing]. We were not sure exactly how that was going to work. But we are also regulated by HHS and DEA. We have pharmacies and OTC drugs, and so we are required to register with the DEA just to make sure that the cough and cold medicine is not used improperly. USDA's food and nutrition services, because we help to administer the WIC and the food stamp programs; the Environmental Protection Agency because we use refrigeration; the Department of Treasury for the financial services stuff we do;

Department of Transportation for hours of service. That is also an issue because we have our own fleet. We come daily in contact with a great number of federal agencies.

Today, though, I would like to talk about one particular regulation that is being developed right now, even as we speak, over at the U.S. Department of Agriculture. The Ag Marketing Service is working on that, and that is to implement a provision that was passed in last year's farm bill that would mandate country-of-origin labeling. Just by way of background, right now we are in a voluntary period. There are voluntary guidelines that were issued by USDA in October of last year. USDA is developing regulations that will implement the mandatory program come September 30, 2004.

Briefly, by way of background because it is the law that is driving this issue, it is unlike any other food-labeling law. Most food-labeling laws, you have got a box of Wheaties. It has to have nutritional labeling, but it is General Mills or whoever makes the food that has to put that labeling information on it. Under the country-of-origin labeling law, it is the retailer who is mandated to inform the consumer about the country of origin for everything that falls into this class of product called a covered commodity.

The definition of "retailer" in the act, the way that USDA interpreted it was they took the PACA definition, which is from another act, and it is anyone who buys or sells $230,000 worth or produce in a calendar year. That may sound like a lot, but all of our single-store operators are covered by this. This is something that is going to put substantial regulatory burdens on our members. So even though it looks like there is a small business exemption, it is not, and because of the way it was drafted, because of the way the definition of "retailer" was drafted, there are some businesses that are excluded in their entirety. Anybody who does not sell any produce at all, like Omaha Beef, is not covered by the law, so the playing field is not level there. The law also does not cover restaurants. So to the extent that the share of stomach is divided between retailers and restaurants, again, our single-store operators are competitively disadvantaged.

The things that have to be labeled are anything that falls into this category called "covered commodity." It is beef, it is pork, it is lamb, it is all fresh and frozen vegetables, and it is all seafood, which you not only have to specify the country of origin; you also have to identify the method of production. We, the retailer, are responsible for telling every consumer that walks in whether the shrimp that they are about to purchase was farm raised or wild caught.

We are responsible, as this law has been interpreted by USDA, for telling every consumer what basically the biography was of every cow that goes into a package of hamburger. We have to report on where that cow was born, raised, and slaughtered. So it is an extensive amount of information that has to be provided.

Chairman SCHROCK. Was that in last year's farm bill?

Ms. WHITE. It was part of last year's farm bill, yes, sir.

It is an extensive amount of information that has to be provided, and it is information that the retailer does not have. We cannot look at a bunch of bananas and say, "Oh, that is definitely from Costa Rica. It should not be marked product of Guatemala." We

cannot look at a package of hamburger and say, "Oh, well, that is clearly a product that was born and raised in Canada and slaughtered in the U.S. and not born in Canada and raised and slaughtered in the U.S."

Chairman SCHROCK. What is the purpose?

Ms. WHITE. Well, it depends on who you ask, what the purpose is. This has been variously advanced as consumer right to know, as food security, food safety, but if you look at it closely, it is clearly not any of those things because this applies to beef but not chicken. It applies to hamburger that you buy at your local Safeway, but it does not apply to hamburger purchased at McDonald's. It applies to peanuts. They are in the covered commodity definition, but they are only nut. It does not apply to pecans.

So you look at this thing with not even too fine a look, and you can clearly tell that this is not really truly food security. This was advanced really in order to try to help some of the domestic producer communities.

The Food Marketing Institute has long supported voluntary country-of-origin labeling. Our members have worked with the production community to help support Georgia peaches and Washington apples and beef from various states in the country, but this is an entirely different type of situation.

Our concern is that once people understand what is really going to be required, they will start to realize that it is not just the small retailers that are going to have increased costs; it is also going to be the production community as well because the way USDA has interpreted this law, they are requiring that records be kept all up and down the food-supply chain for two years for each and every covered commodity, and they are requiring that the place of birth for all of these cows that will end up in your hamburger—my apologies to the sensitive—that place of birth has to be document, the place where the cow was fed has to be documented, and the place of processing has to be documented. So there are going to be costs that will be assumed by the entire production chain.

Chairman SCHROCK. Each piece of meat will come with a mini-encyclopedia, won't it?

Ms. WHITE. Our creative services people put together a little mock-up, and it is quite a little biography. For hamburger, hamburger typically comes from a variety of different sources. Retailers generally—or suppliers often blend meat from a few different sources to get the right lean level because consumers like 93/7, or they like 80/20, or whatever it is, and so from each of those different sources you may have product that has different biographies, so each of the biographies is going to have to be listed on the package of hamburger in descending order of predominance because it was not bad enough to have to list it all as it was.

So we are talking about something that is really, it is laughable except that retailers are going to be responsible for this, and the penalties are serious. The penalties are up to $10,000 per violation of this act. We have got 600 different types of covered commodity in every single grocery store, and this is something that is going to be enforced not only by the feds but also by the states. So basically you have got small retailers sitting there with 600 opportunities, hundreds of thousands of items if you consider each apple a

separate opportunity for a violation and subject to substantial penalties.

USDA did a cost estimate on this.

Chairman SCHROCK. Each apples has to have the biography on there?

Ms. WHITE. Well, apples are a little simpler. Hopefully, they will not have a complete biography. In fairness to USDA, it is not clear what the enforcement standard is going to be, but that is certainly one of the questions that we have. If 70 percent of the apples are stickered, have we fulfilled our obligation to inform the consumer of the country of origin, or does it have to be 99 percent or 99.9 percent? What is the standard?

U.S.D.A. did a cost estimate for this under the Paperwork Reduction Act, again, another example of why those statutes are important, and they estimated that it was going to cost $2 billion for record keeping for the first year alone. That is enormous cost for this program, and we think it is probably underestimated. I think most people around the table would agree that the agencies generally understate the cost of their record-keeping assessment, and we agreed with that, and we filed comments along those lines.

In any event, we talked about enormous penalties. We talked about the record keeping that is going to be required under this. Our membership extends from single-store operators up to the national chains and international chains, but it is the single-store operators that are going to be most disadvantaged, that are going to have the greatest difficulty spreading the costs of these penalties and the record keeping and the system that they are going to have to have in place in order to implement this program.

So we think it is important for USDA to promulgate reasonable regulations under this statute, and we would urge this Committee to keep an eye on that. Thank you very much.

Chairman SCHROCK. Mark, what is the Farm Bureau's pitch on this labeling thing?

Mr. MASLYN. We support country-of-origin labeling, but we also share some of the concerns and feel that—in fact, for example, we have got problems in producing the livestock that are on the ground right now that will be subject to this biography when they come to slaughter, and we do not know how we are going to do that. We do not know how those records are going to be kept or maintained and what they should look like.

We made the comment to the department that we think they have the opportunity to do this in a minimalistic way, as they have done with other programs.

Chairman SCHROCK. Is it effective immediately?

Ms. WHITE. September 30, 2004 is when the mandatory program kicks in, but we are operating now under a voluntary guideline system, so it gives us an idea of how the agency interprets the statute.

Chairman SCHROCK. Okay. Patrick O'Connor, welcome. Patrick is from the International Warehouse Logistics Association. We are glad to hear what you have to say. Thank you.

STATEMENT OF PATRICK O'CONNOR, INTERNATIONAL WAREHOUSE LOGISTICS ASSOCIATION

Mr. O'CONNOR. Thank you, Mr. Chairman. I appreciate the opportunity to be here today, and, again, I thank you, as everyone else has today, for holding this roundtable and giving all of us a chance to speak to you on issues affecting our members and our industries.

The International Warehouse Logistics Association is a trade association of companies engaged in public and contract warehousing and related third-party logistics services. Essentially, a public warehouse or a contract warehouse is a private company that has undertaken inventory management, distribution, and other value-added services for the entity who actually owns the product.

Our members provide such services as we have a member in New Jersey that handles the distribution and inventory management of all of the Starkist tuna on the East Coast. We have a member in Des Moines, Iowa, that handles all of the Kraft and Phillip Morris products for the entire Midwest. We have a member that handles the entire inventory for Tiffany's.

So, as you can see, it is a variety of companies managing a variety of products. Our members are very involved in just-in-time inventory, where manufacturers have outsourced the management of raw material component products, et cetera, relying on our members to provide the components, the raw material, to the production line just as it is needed.

One of the concerns, one of the problems that we have always had, is that our industry, when we speak to federal agencies, it tends to fall on deaf ears, and that is in part because federal agencies do not often understand the role of public warehousing in the supply chain. Just one example of that: We have a situation that affects a number of our members that may be storing chemical products.

A chemical product at some time exhausts its shelf life. It no longer meets the specifications necessary for that product. It is not unusual when that happens for the product owner, which can include many of the large companies in this country, to discard that product, tell the warehouse they do not want it back. They may continue to pay the storage cost on it, but what has happened to the warehouse is that product has now become a hazardous waste, and the warehouse now, if it tries to dispose of that, becomes a generator of a hazardous waste.

We have talked to EPA about this and said to EPA, that infamous agency, What do we do? Can you help us put the burden back on the entity that discarded that product? EPA's response is, You really do not want to raise this with us because, in fact, when that chemical product exhausts its shelf life, you now are becoming a storer of a hazardous waste, and that is even worse. So just between you and I, let us just keep it quiet, and you guys just go about your business.

We have a number of issues that we are involved with. We develop a regulatory agenda every year. I just want to touch on a couple of those today. I will have a written statement that I will leave with the staff. One, and I think some of our members—Bob Taylor from Norfolk Warehouse has spoken to you about this before—is

the Surface Transportation Board and the issue of rail demurrage. Most of our members are located on rail sidings and use rail to receive product and to ship product out. We have been seeking for the last two years from the Surface Transportation Board a realistic mechanism to resolve demurrage disputes that occur with rail carriers. We have worked with the Surface Transportation Board to date with no avail, with no success.

We are hopeful over time that Congress and the STB will consider providing for arbitration of these demurrage disputes that arise between a warehouse and a rail carrier. These disputes can often exceed $100,000, and these disputes often can be resolved in the favor of the warehouse if the warehouse has the time and money to take it to court.

Just an example of what will happen in a demurrage dispute, a demurrage is essentially a charge for not unloading a rail car on a timely basis. The rail carrier may call Norfolk Warehouse and say, "I am going to have five rail cars delivered to your siding to be unloaded on Friday." Under the rate agreement, the Norfolk Warehouse may have 24 hours to unload that rail car. But something may happen, and the rail carrier does not get those cars delivered on Friday, but he has told you they are coming on Friday. So in the rail carrier's records those arrived on your rail siding until you prove to him that they did not actually get there on Friday.

But what happens is you also have five cars coming on Saturday. Those five cars arrive on Saturday, and then the five cars that were supposed to arrive on Friday also arrive, and suddenly you have them backed up. The cost and time you go through in trying to prove your case back to the rail carrier that these cars arrived at your siding at a time that was not your responsibility or fault. We have worked with the Surface Transportation Board. We have worked with the Class I rail carriers, but to date we have had no success.

What we would like to see is an arbitration process where a warehouse could take its case to the Surface Transportation Board, and the Surface Transportation Board would take it to an arbitration process. I will say that the rail carriers do have a reason for being concerned about demurrage. It is not unusual for a lot of companies, such as your big-box warehouses, Wal-Marts, Home Depots, to use the rail car as a warehouse on wheels, and the rail carriers have a real reason to be concerned that that is being abused.

But in the case of a public warehouse, the public warehouse owner does not earn any revenue on the product that is in that rail car until it is unloaded and placed on the warehouse floor. As long as it is sitting out there on a rail siding, there is no revenue accruing to the warehouse.

A second issue I would like to address, and it has been raised earlier in this roundtable, are the Food and Drug Administration's regulations regarding security of the food supply, as required by the Bioterrorism Act. Two regulations in particular that are of interest to us: the record-keeping requirements. This proposal has not been issued yet, but under the provisions of the act, every entity in the food supply chain, which will include food-grade warehouses, will have to keep a record of who the immediate person be-

fore them was in the system, who transported that product to the warehouse where it came from, and then you will have to keep a record of the immediate recipient of that product when it leaves your warehouse.

We have talked at length with FDA about the fact that when a product leaves a warehouse, all we know is that it is going on a truck or a rail car. Once it leaves the warehouse grounds, it can be diverted. We have no way of knowing who the immediate recipient is going to be. But talk about falling on deaf ears; we have invited FDA to come out and visit a public warehouse, food-grade warehouse, see how food product comes in and how it leaves. FDA says, Thanks, but no thanks. We do not need to come out and visit you. We know how a public warehouse works. You quiz them on the operation of a public warehouse, and they have no idea.

The other rule that is of concern is the registration requirement where any warehouse that handles food products will have to register with the Food and Drug Administration that they are, indeed, handling food product.

Another issue are the various Customs requirements that are being developed because of concern with national security and border security. We clearly recognize the threat that exists from terrorism and the potential for weapons of mass destruction to enter this country via land, air, and sea. Virtually every container that comes through the Port of Norfolk will at one time or another come through a public warehouse. So we are really concerned about that and are working with Customs to make sure that they develop regulations, such as the Customs Trade Partnership Against Terrorism, that make sense. We are working with Customs in hopes that they will appreciate the role that the warehouse has in the supply chain and not try to adopt security requirements that are a one size fits all.

In that regard, we are very concerned about the advance manifest information that is required under the Port Security Act. Customs is working now on requiring shipments coming into this country via air, land, or sea for the manifest to be reported electronically in advance of that product actually arriving in the United States.

Of great concern to us is product coming across the northern and southern borders. The straw-man proposal that Customs released several weeks ago would have required that the manifest be delivered electronically to U.S. Customs 24 hours before the product was actually loaded on the truck. With just-in-time inventory management on the northern and southern borders, it is not unusual for a warehouse in Laredo, Texas, to deliver a component to Sony across the border in Mexico, but to get that request from Sony at 12 o'clock noon and have it delivered to Sony across the border by 2 o'clock in the afternoon. We are very concerned that Customs is going to do great damage to the just-in-time, logistics-management system that has become so critical for many of the manufacturers in this country.

One last issue that I want to mention, and, again, it has been raised here today, is DOT's hours-of-service regulation. We were distressed to find out that the hours-of-service rule had gone to OMB as a final rule. We were distressed that that would mean

that there would not be a chance for the regulated community to review that rule, to comment on it, that it was going to be a fait accompli. We were greatly distressed because Congress had specifically told DOT not to issue a final rule until after a date certain. I think the assumption was that DOT would go back, review the original proposal, and come back out with a modified proposal to give industry a chance to respond. DOT has not done that.

We are even more concerned now that we learned a week and a half ago that DOT had reached a settlement agreement with a number of consumer groups, and in that settlement agreement one of the components of that was that they agreed to issue an hours-of-service rule in final by May 31st of this year. We would urge Congress to exercise its authority to review that rule before that rule goes into effect.

Again, Mr. Chairman, we appreciate the work you are doing on behalf of small business and look forward to working with you and your staff during this session of Congress. Thank you.

Chairman SCHROCK. Thank you very much. Larry Fineran is from NAM, the National Association of Manufacturers. We are glad to have you here.

STATEMENT OF LARRY FINERAN, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. FINERAN. Thank you for having me. The NAM is the nation's largest industrial trade association, representing 14,000 members, 10,000 of whom are small and medium sized. The largest part of our focus is, of course, on the impact on small companies, although everybody associates us, unfortunately, with all of our big companies.

On the regulatory front for small businesses, I think everybody around the table is familiar with the fact that it does impact small companies more, especially per employee, just because of the size. I came here originally just talking about the generalities and the things that we have done in the past. Giovanni and I had a meeting this morning where we talked about all of the laws that we have done. As part of the small Paperwork Relief Act process, SBA hosted an event today as well.

There have been a lot of laws passed over the years designed to help particularly smaller businesses and in the name of small businesses, but, again, I just want to echo, they have not been as effective as they could be. And I think partly what role you could play would be to support the Office of Advocacy and even push the Office of Information and Regulatory Affairs a little bit. Don Graham has done a great job. He certainly has tried to get the message out to the agencies that they need to worry about these laws applying to small business, but, again, he has got how many agencies to deal with, and if the agencies, you know, tend to ignore him, he does not have any backup.

So partially what you might be able to do, Mr. Chairman, would be to call the chief information officers, who were created under the Paperwork Reduction Act of 1995 to oversee the paperwork act, and ask them what they have done on behalf of the small businesses for some of the various agencies, particularly for the Department of Labor and EPA, because that is what they are there for.

That is why they were created. I was around at the time, and I can tell you that that is what we were hoping for, that there would be somebody responsible in each of the departments, and particularly, again, with a focus on small business.

With that, I would say, one of the issues facing the smaller companies—again, with the NAM, most of our members are more than 50 employees. I forget the percentage. It is about 15 percent are less than 50, so we are probably a little bit larger businesses than others around the table, although we still come under a lot of SBA jurisdiction. But the focus for a lot of these companies is compliance.

We can argue about the rule all we want before it is implemented, but then once it is implemented, what do I have to do to be in compliance with the law? And, again, hopefully, the single-point-of-contact idea in the Small Business Paperwork Relief Act, that will help a lot. As I mentioned this morning, imagine being a small businessman from Virginia Beach, one of the restaurant owners that you mentioned, and you call FDA and say, "I am having trouble with this regulation. I need somebody to help me." The front-line operators are not exempt from this, and the agencies need to make sure that people know where to send people. So I think, again, that would be one thing.

In terms of some of the other rules that have been mentioned and that have not been mentioned, one in particular is the Family Medical Leave Act has been a problem for a lot of our members of all sizes, and I understand that the Department of Labor, on the good-news front, is taking a look at that and trying to make it an easier regulatory scheme to follow, but there are still many abuses. I do not handle FMLA issues, but I was surprised when I found out that one of the problems is companies, and I think particularly for small companies it would be a problem, have been forced to give up perfect attendance awards for employees because of the way the rules are written. When you are dealing with small companies, it is like a family.

I remember talking to one of our small business owners, who has been called to bail out people for DWI violations because they would rather call her than call their wife or their mother or whoever else because they trust her.

So, anyway, for them to have to give up on something as simple as that is a travesty.

The 24-hour rule as well has been mentioned as a major problem by our members. I was going to bring that up as well. I have used hours of service as my poster child for why you need a strong Office of Information and Regulatory Affairs. When they were developing the rule under the previous administration, I can only say, thank God for the Office of Advocacy, you know. They did a great job educating the business community and educating members of Congress, doing whatever they could in their outreach role of what a danger that rule would have been had it gone forward.

As I tell people, you know, in terms of it is great to have the executive order in place, but when an administration chooses to ignore the executive order, there is nothing anybody can do about it. The rule, especially given SBA's comments, should probably have never been returned to the department for publication in the first

place, yet it still was. Then again, I am kind of distressed now because I was not even aware it had gone to OMB as a final rule.

So I am interested in seeing what it says, as, I guess, everybody else is. So I would just urge your attention to that rule because, again, as the Office of Advocacy was making very clear a couple of years ago, that rule is going to have a tremendous impact on smaller companies just because of the changes in delivery hours as well as smaller truck companies, et cetera.

I would just say this, to leave it again with the agencies and how well they comply with the things that they are supposed to comply with. Giovanni, you used the sling rule. When we did a thing about a year or so ago for the cost-benefit report that OIRA puts out every year, we got one back which I just could not believe was true, and it was. We included it in our public comments last year.

O.S.H.A. has some kind of regulation dealing with boat building dealing with resins, and they incorporated into the rule, into the C.F.R., the National Fire Protection Association standards of 1969. Now, people have petitioned them over the past 34 years to please update it because, of course, those standards have been updated, but they are still in the C.F.R. as the 1969 standards, unless they have done something in the year since we, hopefully, brought it to OMB's attention.

I know the Marine Manufacturers Association and others have repeatedly petitioned them, and they just do not think that it matters that that is what it says. Unfortunately, where it does matter is if you are a boat manufacturer, marine manufacturer, and you have an inspector who just is having a bad day who decides to cite you because you are using the 2000 standards, the most recent, up-to-date standards, then technically you are in violation of the CFR.

Now, again, the enforcement personnel, they all just wave a blind eye to it, but there is potential there for abuse, and why OSHA just cannot take the simple step of incorporating it or just saying the most recent standards instead of having to go through the Federal Register process each and every time it is updated. So I just wanted to put that on the record, too.

Chairman SCHROCK. I do not know why your clients even stay in business sometimes. It is crazy, @is not it?

Walt McDonald is from the National Association of Realtors.

STATEMENT OF WALT McDONALD, PRESIDENT-ELECT, NATIONAL ASSOCIATION OF REALTORS

Mr. MCDONALD. Good afternoon, Mr. Chairman. As you indicated, I am from the National Association of Realtors. In fact, I am the 2003 president-elect of NAR, and we would very much like to thank you and your Committee for the work you are doing and for the invitation to be here today, and we appreciate the opportunity to discuss with you some of the regulatory burdens that are facing the real estate industry.

We are very sympathetic to a lot of the comments that have already been made, but I will share with you that our association is one of the largest trade associations in the country. We have over 860,000 members, and so it might come as a surprise to you when we say we are small business, but the truth is that the typical real estate brokerage company is a small business. Sixty-seven percent

of the residential brokers in the United States have a sales force of five or fewer agents.

My company is a good example of the indication of small business. I am from Riverside, California. I have a residential brokerage company in Riverside specializing in residential properties in the local area. We are definitely small business.

Where there are numerous issues that our industry has been struggling with over the regulatory issues that we have been struggling with over the last months and years, the new, most current ones that we have a problem with are the telemarketing sales rules, the Endangered Species Act, and the isolated wetlands rules. All three of those are detailed in our written summary, which we have already given to your staff, but in an effort to meet your time constraints today, I am going to focus my comments on just two other issues.

First of all, the RESPA issue, the Real Estate Settlement Procedures Act. As you probably are already aware, HUD Secretary Martinez issued a proposed rule last year to reform the RESPA Act. The goal of the reform was to simplify the home-buying process and to reduce costs to the borrowers, and we applaud those goals. Rather than spend time explaining that proposal, though, which is more detailed in our written submission, I will merely try to impress upon you the concerns of our members and the concerns they have regarding the guaranteed mortgage package, referred to in the proposal as the GMP proposal, and why small businesses and consumers will be at risk if that is enacted.

The impact of the proposal would, number one, limit packaging just large lending institutions. Number two, it would encourage borrowers to shop for loans based on an interest rate and a black box of settlement costs because those settlement costs are not identified in their proposals. Number three, it would eliminate a consumer's choice of service providers; and, number four, it removes the Section 8 protection so that lenders have the ability to charge borrowers whatever they want.

Under this scenario, there is a likelihood that costs will increase for the consumer, the quality of service will probably decrease, and only the largest lenders will survive in this environment. The small- to medium-sized businesses will not be able to compete.

What amounts to a broad relief for one segment of the industry, that being that Section 8 harbor or exemption, without evidence of consumer benefit or continued consumer protection, represents, we believe, a very flawed approach to reform and should definitely be revisited.

The second issue that I would like to touch on, and I focus back to a comment that you made earlier, Mr. Chairman, when you said that oftentimes the regulatory environment goes way beyond the intent of Congress, and if there was ever a situation in which this was true, it is the issue of large banking conglomerates being allowed to enter the real estate brokerage and property-management business.

The language that we were successful in inserting in the Fiscal Year 2003 Omnibus Budget Bill recently will bar federal regulators from allowing banks to engage in property management and real estate brokerage only until somewhere around October 1st of 2003,

which is a temporary fix. It is a temporary victory, but the threat is still there and certainly not over.

NAR continues to push for the passage of legislation which would permanently prohibit federal banks from offering new real estate services. This is an issue we have always believed, if enacted, would result in significant negative consequences for the real estate industry, for the consumer, and especially for small business segments of our industry, and that it should be addressed by Congress, not by the regulators, because Congress is the one that created RESPA to start with.

We appreciate the actions of Congress so far and the support that we have gained in attempting to pass this legislation, but we will continue to seek your help in getting this legislation, hopefully, out of Congress this year, and in the interest of time, I would end my remarks by thank you very much for the opportunity to appear before you this afternoon, and certainly we thank the participants in this roundtable for their efforts in solving some of these regulatory problems.

Chairman SCHROCK. I know that bill did not get out last Congress, and I cannot remember if it is being brought back again or not.

Mr. MCDONALD. Yes, sir. It was reintroduced in January as H.R. 111 and Senate Bill 98. Those are reintroductions of the bill last year that had garnered 240 cosponsors in the House, and that certainly should indicate the will and the intention of Congress, but we were unable to move that bill through successfully. The Senate bill, we did not push quite as hard, but I can tell you that it is highly unusual that a bill will come out of the Senate with eight to 11 cosponsors.

Well, it came out originally with eight last year, and the reintroduction this year has 11 cosponsors in the Senate. We believe that with the right help from Congress we can successfully get those bills moved this year and that it will highly benefit not only our industry but the consumers as a whole.

Chairman SCHROCK. Thanks, thanks. Janet Trautwein from the National Association of Health Underwriters. Big issues now, huh?

Ms. TRAUTWEIN. Yes. We have a lot going on right now.

Chairman SCHROCK. You do.

STATEMENT OF JANET TRAUTWEIN, VICE-PRESIDENT OF GOVERNMENT AFFAIRS, NATIONAL ASSOCIATION OF HEALTH UNDERWRITERS

Ms. TRAUTWEIN. What I am going to talk to you about today differs a little bit than what a number of you brought up because I am going to say some nice things about the agencies.

Chairman SCHROCK. Let us go to Frank Purcell.

[Laughter.]

Ms. TRAUTWEIN. But I am going to tell you why, starting off, that I have the opportunity to say that. It is because of the amount of regulatory activity we have, the number of agencies, again, that we are subject to federal and state regulation for, and I am going to go into some of these details, but I would point out that I am going to tell you about a lot of access we have, and I would say that we do have really good access here from our Washington office.

You know, our members out there do not have that, and because we know the right people to call, it does not mean they do; they call us, and we have to hire staff in order to get all of their questions answered. So it is not a perfect world, and so when I say these nice things, I couch it in, you know, we have these relationships because we have to, and we are forced to have these relationships because the transactions are so many.

So in getting into that, let me tell you a little bit about who we are. We have 18,000 members across the country. We are in every state. Our members are health insurance professionals, and they help small businesses and other health insurance consumers buy health insurance. Many of them are insurance agents and brokers; not all of them are, but many of them are, and they are considered a pretty integral partner for small business. Many times an agent or broker works as an H.R. department for a small business. This is quite common.

I guess my first observation is that for small businesses and for our members, the most significant regulatory authority is actually at the state level, and states can make or break a health insurance market. It happens all of the time. It is a really sad situation when we see carriers that are unable to remain in a market because of the overly burdensome state regulatory environment. It is happening much more frequently than it has in the past, and it is a huge problem.

They are the key to whether or not we have affordable health insurance coverage for people to buy, and although their actions are often well meaning, they often operate in a vacuum, and they do not understand what they are doing, and they pass regulations that impede markets from working the way that they ought to.

I would add in their defense that, although they dream up lots of nice things, much of what they do is driven at the federal level, either by their attempts to comply with something that the federal government passed or their perceived inaction at the federal level, and so not everything is something that some state legislator dreamed up or that some constituent brought to them. There is some interaction there, and we are seeing much more interaction at the federal and state level.

As Larry said, much of what our members are dealing with has to do with compliance once a rule is already in, and I would point out that we have had some great experience with the Department of Labor relative to compliance with one particular piece of legislation, the Health Insurance Portability and Accountability Act of 1996. I have seen some superb outreach from DOL in this regard. They have put up an interactive Web site where people can go in with a decision tree and decide what they need to do and how they should comply, and it has been very helpful. They have also gone out and held regional meetings across the country and invited employers of all sizes to attend, and our members have helped to bring those employers to those, and they have done a good job of that.

The other thing I want to mention: We have had the opportunity to serve on a couple of negotiated rulemaking committees, and I would suggest that as a pretty useful process. One of the more recent ones that we served on had to do with the whole issue of sham

MEWAS, not association health plans—this is a different issue—but multiple employer plans that are bogus plans that are set up with a bogus union, and they are not real, and what happens is people are left holding the bag on their claims. They think they are insured, and then they find that they are not. And so the idea of this negotiated rulemaking committee was to find ways to identify which plans are legitimate and which ones are not.

There were many stakeholders brought around the table, and I point that out as a good process for Congress to include in legislation it passes because negotiated rulemaking makes pretty strong recommendations to the agencies, and those recommendations are made on a consensus basis from everybody that is at the table, and usually the right people actually are at the table when it comes around to that. If we had not had our own experience in working with these committees, I might not think that they were a good idea, but I think that they are, and I highly recommend them.

We have also worked pretty closely with the Department of Health and Human Services on a number of things: health information privacy, which is not perfect, by a long stretch of the imagination; access to long-term care; and then also, most recently, on implementation of the health provisions of the Trade Adjustment Assistance Act. We have worked with them a lot on HIPAA and Medicare issues, and, in addition, on implementation of the grants for high-risk pools that were recently included in the TAA legislation.

We find that these agencies are reaching a lot more than they ever did before, which is good. They know that they do not know everything. You could not say that really a few years ago, or maybe we just have more people that are learning. They are reaching out to us and saying, How is it in the real world? What would happen if we did this? And they are doing it before they issue the regulation, and if that can continue, then I see some light at the end of the tunnel on the process.

We have worked a lot with GAO, CBO, and recently with the FDA on a pretty good educational campaign, which is underfunded, by the way, which is why we were working with them on it, relative to the value of generic drugs. Getting the cost of drugs down within an employer plan is pretty critical to making that insurance more affordable, and so FDA is doing a lot of things that people do not know about because they do not have the money to spread the word, so they are trying to find interested parties to spread it on their behalf, but they ought to be able to do some more on their own. So we think that is a real positive experience.

One of the things that I would just broadly observe is that when we pass legislation, good, bad, otherwise, even really good legislation that we think we are going to really like, we think we are really going to like this, and then we have this overzealous legal interpretation of what it says, and what we come out with is not anything like what we started with, and we have got all of these balls and chains that should not have been on there on something that was supposed to provide more access. We have all of these impediments that are not supposed to be there.

This happens all of the time. So I do not know what we do about that, but this overzealous interpretation is a huge problem. I do not

know how we circle back to congressional intent in a better way than we are doing now, but we have got to find a way to do that. It is really a manipulation of the whole process, and it happens in many areas.

The other thing that we have observed a lot within the agencies is duplication of efforts, particularly within CMS. We work with so many different people that we can observe that. We know that four groups are working on the same project, but they are so big, they do not know that four of them are, just because we are working on the different areas. They are doing better with this, but there is still a lot of duplication of efforts, which, of course, is a waste of our taxpayer dollars, and they could be working on more productive things.

Chairman SCHROCK. They could get rid of the organization, as far as I am concerned.

Ms. TRAUTWEIN. I would say that CMS has been really good lately in sending over bulletins that they write before they issue them to say, What is going to happen if we do this? They have done that. There is a group of people——.

Chairman SCHROCK. HCFA would never have done that, would they?

Ms. TRAUTWEIN. Never, never. It is much, much better than it has been, but it has a long way to go.

Chairman SCHROCK. Good. Keep us posted on them because I was on the state health care commission when I was in the state senate for five years.

Ms. TRAUTWEIN. They are doing a lot better. Again, the overzealous interpretation is still a problem. It is a fairly recent problem.

I guess I will close there. I know we have other people that have something to say. It is not perfect, but it is much better than it used to be.

[Mr. Trautwein's statement may be found in the appendix.]

Chairman SCHROCK. Great. Thank you. Following on a medical theme, Frank Purcell is with the American Association of Nurse Anesthetists. That is the hardest word in the world to say, but I think I did it okay.

Mr. PURCELL. As a trained veteran of health care policy, you did very well.

STATEMENT OF FRANK PURCELL, AMERICAN ASSOCIATION OF ANESTHETISTS

Mr. PURCELL. Mr. Chairman, thank you very much for gathering us together for this roundtable on regulatory reform, and it is fitting that you have representatives from business, from many aspects of private enterprise, and also from health insurance and health care.

Health care is one of the most highly regulated industries in the country at every level of government, and a substantial portion of that regulation exists for a good reason. When you go to the hospital or go to have a health care procedure done, you want to ensure that that person is not a government-relations professional. You want to ensure that that person is a trained health care professional.

In the case of nurse anesthetists, our 30,000 members around the country provide 60 percent of anesthetics nationally. They are the sole anesthesia provider in two-thirds of U.S. rural hospitals, and thanks to turning challenging cases into education and training and research and practice, the Institute of Medicine reported in 1999 that anesthesia today is 50 times safer than it was 20 years ago. So these are all very good stories to tell.

Many of our nurse anesthetists, the vast majority of them, are either independent practitioners or employees active in small businesses. They are employees or owners, proprietors of a group practice with whom a hospital might contract or an ambulatory surgical center might contract in order to provide anesthesia services there.

In the military area, which I know you are very familiar with, nurse anesthetists provide the lion's share of anesthesia to our service personnel, domestically and abroad and aboard the capital vessels of our great United States Navy.

As far as federal regulatory issues are concerned, many of these will not come as a surprise to you. I will echo my predecessor and state that under President Bush and Secretary Thompson we have found the Department of Health and Human Services and the Centers for Medicare and Medicaid Services responsive to our concerns on a couple of issues. We have found them responsive to our concern that Medicare reimbursement for a time disadvantaged teaching hospitals from adequately securing clinical sites for the education of nurse anesthetists in their facility. We have come to a resolution with CMS on this, and it is going fine.

We have found CMS willing to increase the number of cases that a rural hospital might perform and still qualify for cost-based, pass-through funding in order to employ nurse anesthetists at that rural hospital. Again, CMS was extremely responsive. We worked together with them, and the result, we find, is going to help secure and expand the access to quality health care in rural areas that is very important.

Lastly, HHS had, once it first issued its privacy rule to comply with the provisions of the Health Insurance Portability Accountability Act, the HIPAA, that initial privacy rule would have had a deleterious effect on many health care professionals who count on research to advance the practice. It would have made it nearly impossible to obtain records of difficult cases in health care. When things go wrong, one needs to find out what happened so that one can find out how to not make that happen and to train others in making sure that the improvements are made.

Under that early version, those closed-claim studies would have been very difficult to perform. We are happy to report that under the HIPAA privacy rule final rule, though while it is not the easiest thing in the world—I recognize there are many difficult and challenging issues at hand there—that it does, however, permit us and other health care providers to engage in these closed-claim studies so that we can improve the quality of health care.

The largest federal issue by far for nurse anesthesia, though, is Medicare reimbursement, and here regulation and legislation from Congress blur a great deal. Medicare is, as any agency, responsive to and obeys the orders that Congress gives. Congress gives orders

which sometimes have effects which do not necessarily occur in the way that Congress intended.

One of those areas is the area of Medicare reimbursement for health care services under Part B. For the past two years, Part B reimbursement for physicians and for nurse anesthetists and other health care providers suffered serious cuts, five and a half percent two years ago. It was scheduled for a reduction further of 4.4 percent for 2003. In the case of anesthesia, we are anticipating reductions of 3.4 percent for 2003.

Now, these are exceptionally difficult things when you have got an increasing aging population, and the need to insure access for health care coverage, that when Medicare is, through obeying a formula Congress provided, that formula which incorporates factors other than simply health care, that that has really challenging effects upon our seniors and their families who count on and have paid for Medicare that should be excellent, which they deserve.

Thanks to the work of Congress, just as part of the omnibus appropriation adopted the 13th of February, CMS on the 28th of February, have reversed the most difficult parts of the 2003 physician fee schedule that had those cuts. So instead of a cut, Part B has increased 1.6 percent, and the anesthesia conversion factor used to compute anesthesia reimbursements, up 2.7 percent. It does not correct the underlying formula problems in future years, but we know that through your leadership and the leadership of the administration and many others that work hard and mean well, we might be able to secure Medicare reforms that also secure citizens' access to care.

Lastly, and a matter that is more clearly a legislative matter, but it arises in states and regulation and in law—I will be very brief on this—is the matter of medical malpractice liability reform. I do not have to discuss this in great detail with you because you have had great experience with this in the state house in the State of Virginia and also in the Congress, but the adoption of H.R. 5 is critical to ensuring that funding in health care is used for health care and not to expand the forces and issues that are not providing health care in this country.

Like my predecessor in speaking, though, we have a number of federal regulatory issues. A number of issues, of course, arise in the States, and the chief regulator of nurse anesthetists and of all health care professionals are state laws, state rules, state regulations. Those govern the licensure of health care professionals, and with some notable exceptions, the federal government does not.

But the challenge that nurse anesthetists face in the state is not necessarily the sling rule or the ergonomics rule. It sometimes is, as you know, the golden rule, which is he who has the gold makes the rules. And the challenge for nurse anesthetists and other health care providers which are not physicians is that they are trained—in our case, master's prepared—to provide the range of health care, in our case, to provide anesthetics in any instance and every instance, and yet, through political and other pressures, restrictions are placed on the practice of nurse anesthetists not because of health care-quality issues, although they like to pretend it is so, but because they would like to restrict nurse anesthetists

from being active and vigorous and productive competitors in the marketplace.

Those states' practice guidelines are reviewed. In a relatively recent Yale Journal of Regulation article by Barbara Safreit, which I would be happy to share with your staff, which goes into this issue in great detail and underscores the economic challenges and the loss of care that is provided to citizens of many states, especially in rural and urban underserved areas, because of these restrictive and unwarranted regulations.

We are grateful, again, for the time that you have shared with us, and we thank you for your vigorous advocacy on behalf of health care and the military, and thank you for listening.

Chairman SCHROCK. Thank you. Medicare reimbursement is a huge issue. I hear it all of the time at home. I do not know of any member of Congress that was excited about the cuts, so we knew that was not going to happen, and it is a good thing, but we have to do a better job at increasing that because it is just killing medical practices at home.

I am glad that you both said what you said about the CMS because Tommy Thompson, when he first came up here, said that was something he was going to get his hands around, and obviously he has, and that is a good thing because it was kind of an organization when it was HCFA, totally out of control.

Mr. PURCELL. It was a challenge, and we know as well when Secretary Thompson first came aboard in the very first months of the Bush administration, he shared with us, as with others, my door is open to you. If you have a challenge or a problem, let me know.

Chairman SCHROCK. And he means that. He does.

Mr. PURCELL. And cynics, folks would say, yeah, right. But we found him to be true to his word.

Chairman SCHROCK. That is right.

Mr. PURCELL. And what more can you say about him?

Chairman SCHROCK. That is right. That is great. Thanks.

Betsy Laird with the International Franchise Association. Are you any relation to Melvin Laird, who used to be the secretary of defense?

Ms. LAIRD. Only when I want to get a good seat at a restaurant. [Laughter.]

Ms. LAIRD. No relation that I am aware of.

STATEMENT OF BETSY LAIRD, INTERNATIONAL FRANCHISE ASSOCIATION

Ms. LAIRD. I represent the International Franchise Association. We are here in Washington. We have been around for 40 years. We represent over 800 franchise companies, 6,000 franchisees, and suppliers of franchise businesses, and talk about job creation: Franchising provides eight million jobs a year. We account for over a trillion dollars in retail sales in the U.S. economy.

The interesting thing is that many of our members started out as small businesses, and they have grown and expanded through the use of franchising. We represent folks like Marriott and McDonald's and Meineke and Mailboxes Etc. and lots of other companies that start with letters other than "M."

Most of our membership is primarily composed of small businesses, however. The remarkable thing is most of them have revenues of less than $5 million, and they employ less than 50 employees. One of the most interesting concepts is actually located in your district, and the name of the business is Geeks on Call.

Chairman SCHROCK. Oh, yes, yes.

Ms. LAIRD. What they are is two gentlemen got together and decided that they would go into computer repair, and they will come to your home, or they will come to your office. You have probably even seen their cars riding around town.

Chairman SCHROCK. I have seen their ads. They wear black-rimmed glasses with tape on them right here.

Ms. LAIRD. That is right.

Chairman SCHROCK. They have that geeky look.

Ms. LAIRD. That is right. They have got some great marketing ideas.

Chairman SCHROCK. They really do.

Ms. LAIRD. They are a member of ours.

Franchising is regulated at the federal and the state level. At the federal level, the Federal Trade Commission has what is called a "franchise rule." It has been in place since the seventies and requires a franchise company to provide very comprehensive disclosure to potential franchisees before the purchase of a franchise business. The FTC is in the final stages of revising this rule, streamlining it. We are very supportive of the process, and we think it will significantly improve the rule.

The interesting thing about franchising is it is spread out over 75 different industries, whether it is pharmaceuticals or cleaning your house or computer repair, et cetera. Several of our members have expressed to me specific concerns somewhat specific or targeted to their industry. For one thing, a number have actually raised questions about the availability of 7[a] loans, and the way that the SBA looks at factors in establishing who should be eligible for a loan.

In the case of franchised businesses, oftentimes they look at the level of control between a franchiser and a franchisee. They also look at the aggregate size. When you take a small franchisee, who might be, say, a McDonald's owner/operator, and you add them into McDonald's corporate, as a result a lot of folks are probably being denied access to 7[a] loans when they are well deserving of such loans. So we might raise this issue before the Subcommittee, worthy of revisiting the standards that the SBA does have in place.

Something else that I really need to bow down to the real expert in the room, which is Giovanni, something that they have worked on at the chamber and also the National Restaurant Association; it did not come up today, but I know a lot of our members are very worried about it, and that is social security mismatch and what the potential liability may be for employers that have workers where the social security numbers do not necessarily match up with the employee names.

The IRS has announced that it is going to start a program in 2004 that will be retroactive to 2002 for a mismatch on W–2 filings. Quite frankly, the concerns are that the IRS has not provided a lot of guidance about this issue. However, there is a potential for great

and significant liability. Folks that are in the IRS field offices throughout the country are very confused and applying inconsistent applications or advice on how employers should proceed. Several of our folks have actually recommended that you might want to suspend the 2004 enforcement process until clearer and more explicit guidance can be given for employers, so that would be an IRS issue.

Rob Green talked about some of the other Department of Labor issues. We share many common members and are supportive of the NRA's stance on those.

Lastly, we have a home health care issue, and that is an IFA member has raised to us kind of a growing trend, and that is the classification as our population becomes more and more elderly, and that population grows, the classification of home health care providers as either independent contractors of employers. We have a member company who provides companions to the elderly or those that are physically ill and need someone to come in and be a caretaker in their home.

What is happening is at the state level there are nurse registries which will send a companion out to a home that needs help, and more and more it is becoming increasingly common that these companions are classified as an independent contractor. Therefore, these nurse registries are not paying into worker's compensation. A companion might get injured and does not do anything about it, goes to work for an employer as an employee, and then files a worker's comp claim.

So our members are concerned that it is a way to sort of short shrift the system and had asked that I bring this up in the hope that the Subcommittee contact the IRS to stand behind its 20-question, employee-determination test, not make an exception to nurse registries, and not add in being able to circumvent current law.

Thank you very much for your time and attention today.

Chairman SCHROCK. Thank you. I appreciate that.

Todd McCracken is with National Small Business United. Thanks.

STATEMENT OF TOM McCRACKEN, NATIONAL SMALL BUSINESS UNITED

Mr. MCCRACKEN. Thank you very much, Mr. Chairman. I will try to be brief today. Thank you for having us here. NSBU represents 65,000 small businesses all over this country in Washington on legislative and regulatory matters. You have heard a lot of really excellent specific examples from people today of real problem regulations, but I also want to carry another message, and that is it is not just the problem regulations that are a problem.

You hear about regulations that are irrational, that have not been well thought through, that have particular distortions in various markets, but also the reality is that the most rational regulation adds another dollar that the business has to comply with, and you add them on top of one another and on top of one another, and not only do they have an enormous impact on the economy overall; they have a distorting impact on small companies.

I am sure you are aware of a study that the SBA Office of Advocacy did three or four years ago that said that the average cost

even then of regulations on companies that have fewer than 20 employees is $7,000 per year per employee, , whereas for larger companies, those with over 500 employees, it is only $4,400 a year per employee. So there is a large gap there, obviously.

So there is a distinct impact in the regulatory arena on small companies, and that is why we think it is so crucial that there are special tools for small companies to combat these regulatory burdens—the Regulatory Flexibility Act, the U.S. SBA Office of Advocacy, and so forth—and I will get to some more specifics about them in a minute.

We should also bear in mind that those are actual outlay costs. We also have to realize there are huge costs for small companies in complying with the regulations that have nothing to do with actually writing a check to anybody or complying in a particular way, and that is simply—costs, the time. You have to remember that a small business owner is the chief executive officer, the chief financial officer, the chief information officer, the chief safety officer, the chief cook and bottle washer essentially of every business, and they often, especially in the smaller businesses, have to attend to all of these burdens personally, and it is an enormous share of their time, especially in some particular kinds of companies, to comply with all of these federal mandates. So we can guess what they are not doing while they are complying with the regulations. They are not increasing productivity. They are not innovating. They are not growing, hiring more people. They are not creating economic growth and wealth for their communities.

So we think that the need, also in addition to sort of really stopping these really obviously bad regulations, but to try to find a good way we can get a handle on the overall regulatory burden as it stands.

What are some solutions to some of these problems? Well, one is, as other speakers have suggested, to strengthen the Office of Advocacy. We have gone some part of the way there through the president's executive orders and other things, but there certainly is time for us to make that office more independent through a line item in the budget, and then the next step from that is to try to get them more resources so they can be much more effective advocates, even more so than they are right now, for small companies.

The other is to strengthen the Regulatory Flexibility Act. We do not hear much about that these days, but there are what I would call loopholes in the RFA as it stands today, and those can be tightened up. I think one of the biggest ones, which was mentioned earlier, was the national ambient air-quality standards.

A few years ago, we were part of a lawsuit at the time that we filed against the EPA because they did not go through any regulatory flexibility analysis or any process when they promulgated those rules, and the suggestion was that they had violated '96—actually the '80 law, technically, and the reason that they said they did not do it, which makes, I guess, a bit of sense, is, well, we did not really regulate small businesses at all. We told local and state communities, well, you are going to have to meet these standards. That is what we were there proposing to do. You ought to meet these standards, and it was really up to the state governments to

figure how to do it, so we are not regulating small businesses; we are regulating localities. And they won.

While they lost the overall case, the courts found for the EPA on the point that they did not have to comply with the Regulatory Flexibility Act in setting those standards. Now we have members of Congress and others who are promoting more regulations, global-warming regulations, that look like they will be shaped in much the same way.

So I think the time is now to close that loophole in the Regulatory Flexibility Act so that we can begin to deal with some of these other laws that may be coming down the pike before too terribly long. And also a lot of these regulations are at the state level, so right now the Office of Advocacy, much to their credit, I think, is undergoing an effort to call attention to the RFA at the state level and encourage more states to develop their own Regulatory Flexibility Acts to deal with their state regulations, and we would encourage that as well.

The final thing I would mention is, as, I think, Giovanni mentioned before, the Section 610 review that is in the law right now. No one listens to it, and I think that is the single best tool that could be utilized to get rid of needless regulations, not necessarily regulations that are wrong-headed or create huge problems in particular industries but which simply are on the books, that take up some modicum of time and energy for some people, and just ought to be gotten rid of. OIRA, to their credit, is undergoing a process similar to that of their own free will, but it is not under the Section 610 auspices, and it really should be.

With that, I will try to end there, and we can—for discussion. Thanks.

Chairman SCHROCK. I think your most fascinating comment was even rational regulations add to the bottom line, yes.

Shanna, you are the trooper.

Ms. CAMPAGNA. I am happy to be here.

Chairman SCHROCK. You sat through all of this. Is it Campagna?

Ms. CAMPAGNA. Campagna.

Chairman SCHROCK. Campagna.

Ms. CAMPAGNA. Like lasagna.

Chairman SCHROCK. Oh, lasagna. Okay. Shanna Lasagna from the National Beer Wholesalers Association. Thanks for being here.

Ms. CAMPAGNA. Sometimes I get Shanna Champagne, but that is another group. I do not want to put Mr. Green on the spot, but I think I heard him make reference to buying wine over the Internet, which in most cases is a violation of the 21st Amendment, so I am sure—we will talk about that.

Mr. GREEN. It is a technicality.

Ms. CAMPAGNA. Right. That is another committee, too.

STATEMENT OF SHANNA CAMPAGNA, LOBBYIST, NATIONAL BEER WHOLESALERS ASSOCIATION

Ms. CAMPAGNA. Chairman Schrock, thank you for the opportunity to be here today. I am Shanna Campagna, a lobbyist with the National Beer Wholesalers Association. By way of introduction, let me just tell you a little bit about the beer wholesaling industry.

As set forth in the 21st Amendment to the Constitution, beer wholesalers are the middle tier of the three-tier system for distribution of beer. We distribute beer from the brewers to the retail locations. Those beer trucks you see navigating safely down your home town streets delivering America's beverage to your local grocery store and FMI member; that is your beer wholesaler. The average wholesaler has annual sales of about $14.1 million, employs around 48 people, maintains and operates a fleet of 12 vehicles, and owns a temperature-controlled warehouse. Most are family owned and operated.

Regulation is a way of life for beer wholesalers. We are regulated every day by BATFE, the FCC, DOT, NTSA, and FMCSA, EPA, OSHA, the IRS, Treasury's new Tax and Trade Bureau, and many other federal as well as state agencies.

I want to address the main way the Subcommittee might be of assistance to us, to our industry, in regard to our regulatory concerns. Commercial driver's license reform is tantamount to ergonomics within our industry. Beer is delivered by your local wholesaler via truck to bars, restaurants, supermarkets, and convenience stores.

Our drivers generally double as our salespeople. Sales, delivery, and customer satisfaction are their primary responsibilities, and driving is secondary. They are in and out of their trucks all day servicing these accounts. In fact, they spend the majority of the time with their engines turned off and only drive about 25 percent of their work day. Further, they drive within about a 100-mile radius of their warehouse, if that, and spend the night at home with their families each night. They are not long-haul truck drivers.

Currently, however, our drivers are required to have the same commercial driver's licenses as long-haul, interstate drivers. While NBWA fully supports rigorous testing standards for our drivers, it is unduly regulatory and unnecessary to require a driver engaged in intrastate commerce, where the operation of a truck is but a small part of the employee's job, to the same standards as someone delivering a load from Maine to California behind the wheel of an 18-wheeler.

Beer wholesalers have inadvertently found themselves in the business of training CDL drivers for the large trucking companies. While not true in every market, a disproportionate number of our members find themselves providing costly training and licensing fees for CDL drivers who are then cherry picked from our operations to drive for the interstate trucking companies. The cost and burden of training drivers is one our members are willing to bear, but they are growing weary of training drivers for other companies.

To this end, Congressman Howard Coble will soon, and that is likely tomorrow, introduce the CDL Devolution Act of 2003. The bill will return power to the states by allowing states to license intrastate drivers of commercial vehicles based on testing standards determined by the state. The emphasis is on allowing the states to regulate intrastate trucking, not mandating that the power return to the state. An identical bill was introduced by the congressman, Congressman Coble, in the 107th and garnered the support of 86 House members.

I submit to the Committee that this is exactly the type of regulatory relief that helps small businesses. Let states decide how best to regulate what happens within that state, if they so choose.

Again, thanks for the opportunity to be with you today and for your interest in NBWA's regulatory issues.

Chairman SCHROCK. I should know. Where did that bill go last year, nowhere?

Ms. CAMPAGNA. No.

Chairman SCHROCK. Did it come to the floor?

Ms. CAMPAGNA. No.

Chairman SCHROCK. It never came to the floor.

Ms. CAMPAGNA. No. To some extent, we are looking to see what happens with reauthorization and getting some support for that. So since this is a reauthorization year, we are hoping to have some action on that.

Chairman SCHROCK. I am very familiar with the beer wholesalers. In fact, my son, during the college summers, worked for one of them, did the driving.

Ms. CAMPAGNA. And he has a CDL?

Chairman SCHROCK. He what?

Ms. CAMPAGNA. So he has a CDL.

Chairman SCHROCK. What is a CDL?

Ms. CAMPAGNA. A commercial driver's license.

Chairman SCHROCK. Oh, no, no, no. He does not.

Ms. CAMPAGNA. Well, he better not have been driving, then.

Chairman SCHROCK. Well, he was, but he is out of college working here now.

Ms. CAMPAGNA. Well, that wholesaler did not have this problem then. It is an issue where if a wholesaler has a distributorship and owns property across the street, and they load the trucks in the mornings, they have to have a CDL driver to come from across the street to bring the trucks across the street to load them and take them back.

Chairman SCHROCK. I should not say he did not. He may have, and we just did not know, but they are good people.

Ms. CAMPAGNA. Yes, they are.

Chairman SCHROCK. Thank you all very much. You have hung in there for over two hours, and I appreciate this discussion. We usually have a period of questions and answers, but I think the day is growing long, and you probably all would like to get out of here.

A lot of what I heard here today, we heard last week. There is a common theme running throughout a lot of this, and I think what that is going to do is help us formulate where we are going to go throughout the remainder of the two years of the 108th Congress because there are clearly some things that need to be done, and they need to be done fairly quickly.

I appreciate everything you have said here. I intend to read everything you have submitted. I will have to start doing that here pretty quickly because we have got to come up with our agenda. It just seems so overwhelming, really. There are so many things that when you talk, yes, we have got to fix yours, we have got to fix yours, we have got to fix yours, but there are so many common threads that run through all of your stories that I think if we can

do some of that and get some substantive legislation in here on the floor, it would certainly help, and I intend to do that.

We will be in contact with you again, I am sure, because we want your input. We are going to clearly have some hearings up here where we will sit up there and make it look more official than this, but your inputs are greatly appreciated and, I think, will guide us as we start heading through the rest of the 108th. If you all do not have further questions, I thank you, and this hearing is adjourned. Thank you very, very much.

[Whereupon, at 4:15 p.m., the subcommittee was adjourned.]

I would like to call this meeting to order. Ladies and Gentlemen, welcome and thank you for your participation today. I was recently honored to be selected the Chairman of the Regulatory Reform and Oversight Subcommittee of the House Committee on Small Business.

I look forward to working with all of you to address the immense regulatory burden affecting small businesses.

Countless efforts to reform and reign in over-reaching regulations have met with increasing resistance from the government bureaucracy, even when it is in the hands of a small business-friendly administration.

This is the second roundtable that I have hosted. I hope to take from both of these events some priorities for the 108th Congress for this Subcommittee.

In a time when our economy relies so greatly on small businesses to keep our country moving, we cannot afford to stifle that progress by continuing to pile on costly regulations that disadvantage these businesses. Half of our national workforce is employed by small businesses and two-thirds to three-fourths of net new jobs are created by small businesses.

Now is the time to do everything in our power to limit the reach of the regulators and lower the cost of regulation to small businesses.

I look forward to the testimony of all of our participants. I ask that you hold your opening statement to no more than 3 minutes to allow time for discussion.

I would now like to recognize our first witness, Don Huizenga of the American Foundry Society for his opening remarks.

STATUS ON THE FEDERAL REGULATORY BURDEN

March 4, 2003

Presented to:

Honorable Ed Schrock, Chairman
Subcommittee on Regulatory Reform & Oversight
House Committee on Small Business

Presented by:

Harry C. Alford
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Mr. Chairman, distinguished members of the subcommittee, we thank you for allowing the National Black Chamber of Commerce to testify before you about the very serious subject of regulatory burden.

The National Black Chamber of Commerce was founded in May, 1993, with 14 chapters. Today, we have over 190 affiliated chapters in 40 states and 8 nations. We are the largest association in the world dealing with business development and economic empowerment for Black communities. We proudly represent the 1 million Black owned businesses in this nation and have a reach to nearly 100,000 entrepreneurs.

The regulatory burden can be quite challenging to small business and, thus, can have a negative impact on our economy in general. Small enterprises are a dynamic and growing part of the American economy. They represent more than 99% of all employers, provide 75% of the net new jobs, and contribute 51% of the private sector output in this country.

Congress has enacted two critical laws that are to assist small business. The Office of Advocacy for small business was established under Public Law 94-305. The Office of Advocacy was strengthened by reporting agency compliance with the Regulatory Flexibility Act of 1980 (RFA) which was later amended to include the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). On August 13, the President signed Executive Order 13272, strengthening the Office of Advocacy's ability to bolster agency compliance with the RFA. Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking", underscores agencies' obligations to consider the impact on small entities when writing new rules and regulations. Additionally, E.O. 13272 requires that Advocacy teach agencies how to solicit and consider the views of small entities throughout the rulemaking process. We are already seeing results as agencies consult with Advocacy and ask for training earlier in the rule development process.

Another positive development has been the establishment of the Ombudsman Office of the SBA. This office has been playing a very active role in soliciting views and comments from business owners about government regulatory practices. Hearings have already been held in Kansas City, MO and Washington, DC. These hearings will be continuous throughout the nation.

It was not too long ago that we had to contend with a very arrogant Environmental Protection Agency. The EPA was trying to enforce new rules regarding the National Air Ambient Quality Standards (NAAQS) and Title VI enforcement. They were trying to do this without regard to SBREFA. Fortunately, Congress and the courts stood up for small business. E.O. 13272 and more diligent leadership should prevent a recurrence of such "rough shod" activity.

The NBCC is working with the US Chamber by supporting its new Institute for Sound Regulation. The US Chamber has established this new entity to provide a heightened focus on ensuring the quality of regulations promulgated by federal agencies. The burden

of federal regulations, in terms of annual compliance costs, is nearly 60% greater for small firms when compared with larger employers. One of the guiding principles of the Institute for Sound Regulation is that regulatory agencies should focus on the particular harm caused to small businesses by federal regulations.

The NBCC is leading efforts within the business community to ensure successful application of the Data Quality Act, which requires agencies to use sound science and statistics to support agency regulations and policies. Using half of the science or cherry picking the data can no longer be accepted. This is particularly important in many environmental issues.

Even with the above improvements there is still a great need for entities like the NBCC to be a virtual "watchdog". Some forces try to use the courts to establish new regulatory burdens. In the case of Forest Conservation Council and The Friends of the Environment vs. the SBA, a good example of this evolved. The plaintiffs were suing the SBA for issuing 7a loans to businesses in suburban Virginia. They considered this pro-sprawl and demanded that each loan must have assurances of no environmental impact. The SBA was about to require that future loan applicants, small business owners, go out and secure certificates from various agencies up and down the East Coast attesting to no adverse environmental impact before their business loans could be approved. The net result of this cumbersome task would be to exponentially reduce the amount of capital access available for small businesses. The NBCC and the Small Business Survival Committee forcefully interceded in this lawsuit and have so far successfully argued against the settlement.

Vigilance is the key for business associations. We look forward to working with the fine leadership on this subcommittee and with the rest of Congress and the Administration. The mechanisms for good common sense are now in place and are being enforced. Challenges have not disappeared but we are motivated by the fact that there is a smooth process to rectify certain unruly predicaments.

Thanks again for this opportunity.

Testimony for

The United States House of Representatives

Committee on Small Business

Subcommittee on Regulatory Reform and Oversight

Roundtable

March 4, 2003

By

Janet Trautwein, Vice-President of Government Affairs
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Good afternoon. My name is Janet Trautwein. I am Vice-President of Government Affairs for the National Association of Health Underwriters. The National Association of Health Underwriters is an Association of health insurance professionals involved in the sale and service of health insurance and related products. Our almost 18,000 members serve the insurance needs of 100 million Americans across the country. Because our members work so closely with small businesses and other health insurance consumers, we have the opportunity to observe health insurance markets on a local basis, and to assess strengths and weaknesses of markets across the United States. This credible experience has resulted in our having an opportunity over the past few years to work on a positive cooperative basis with a number of federal agencies and we are pleased to comment on these experiences today. We have had excellent access to decision-makers throughout the administration, and feel that our input on the realities of the marketplace appears to have been both desired and used in the regulatory process.

Our first observation would be that for small businesses, the most important regulatory authority is at the state level. State legislatures and state departments of insurance often hold the key to affordability or lack of affordability for small businesses seeking health insurance coverage. Overly restrictive state legislation and regulation has been one of the most significant factors in reducing access to affordable health insurance coverage. This is not due to lack of interest in protecting the consumer at the state level, and in fact, state departments of insurance have done an excellent job of protecting consumers interests. Unfortunately, departments of insurance largely regulate the laws passed by well-meaning state legislators. These laws have too often resulted in market suppression with the result of higher costs and less choice for consumers.

We would observe in all fairness that some state laws are driven at the federal level, either through passage laws that require state action, or through perceived federal inaction that results in states' attempts to solve problems that might better be solved at the federal level. Where federal laws have been passed relating to health issues, a number of federal agencies are typically involved both in issuing regulations and in communicating and enforcing those regulations.

The Department of Labor

We have worked very closely with the Department of Labor on their HIPAA (Health Insurance Portability and Accountability Act of 1996) educational projects, and have been a working partner on their Health Education Team. This has been a very positive experience for us at our national office, as well as for our members at large. HIPAA is a very complicated law, with many implications for businesses of all sizes. The Department of Labor has done an excellent job of producing good communication materials for both employers and employees, as well as reaching out to the public to answer questions and explain individual rights under the law and the details of compliance. We have been fortunate to coordinate with them on many of their regional presentations around the country, and our members and their clients have benefited greatly from the expertise offered by Department of Labor employees making these presentations.

We have also worked with the Department of Labor in a very positive way on a negotiated rulemaking committee that related to unions and sham MEWAS (Multiple Employer Welfare Arrangements), a very important effort to protect the financial resources of Americas small businesses. This particular committee was tasked with working with stakeholders to protect the availability of legitimate health insurance products offered though bonafide collectively bargained plans while finding ways to identify sham plans frequently marketed to small businesses that leave policyholders financially exposed for health insurance claims they thought they had insured.

The Department of Health and Human Services

Another agency we have worked closely with is the Department of Health and Human Services. They have been extremely open to us in discussing issues related to Health Information Privacy, access to long-term care, and implementation of the health provisions of the Trade Adjustment Assistance Act.

The Center for Medicare and Medicaid Services has been particularly helpful in providing information to us and in seeking our opinion on pending actions. We have had the opportunity to work closely with them on HIPAA and Medicare issues for quite some time, and more recently, on implementation of the high-risk pool funding grants that were a part of the Trade Adjustment Assistance Act of 2002. We have found them reasonable and dedicated to a factual interpretation of the laws passed by Congress.

Other Agencies

Other agencies have also been helpful to us and have asked for our input from time to time. These include the General Accounting Office, with whom we have worked on several projects, the Congressional Budget Office, to whom we have provided market data relative to various pieces of legislation being analyzed by them, and the Food and Drug Administration, which has provided some excellent educational materials relative to the value and safety of generic drugs that our members have found very helpful in educating employers and their employees on ways to reduce the cost of prescription drugs.

Finally, the Social Security Administration has been available to educate our membership on a variety of issues, and the Treasury Department has been very helpful with interpretation of issues related to HRAs (Health Reimbursement Accounts), Section 125, and implementation of the health provisions of the Trade Adjustment Assistance Act of 2002.

As you can see our experience with federal agencies has been a positive experience. The general philosophy throughout the administration is consistently service oriented. In spite of that, many federal regulations go much farther than is helpful to provide the best service to consumers. Often we find that overzealous legal interpretation of laws passed results in too heavy a burden for small businesses and other health insurance consumers. The desire to prevent every possible manipulation of a law often results in a regulatory

process that would appear to be far from what might have been envisioned by the members of Congress who voted for the law. The current problems with the Medicare+Choice program are a perfect example of this problem.

Another problem we have observed in the past with CMS has been duplication of projects by more than one working group within the agency. We've seen a lot of improvement in this area in the past year, and believe the efficiency of CMS has improved dramatically during this time.

Another problem in the past has been the appearance that each agency operates in a vacuum, even by agencies that share responsibility for producing regulations. However, again in the past year, we've seen much more cooperation between the agencies through working groups dedicated to various subject areas, which has vastly improved the speed of regulation writing. We've also seen improvement in the area of discussing various aspects of regulations with stakeholders during the rule writing process, which should greatly improve the accuracy of initial proposed regulations that form the basis for most business and health plan compliance.

Our overall observation is that those who are working in federal agencies are not the faceless bureaucrats they are sometimes depicted to be, but rather, dedicated individuals who do their best to work as efficiently as they can to serve the public. There is of course room for improvement, as there is in the private sector. We would be happy to expand on specific experiences we have with federal agencies and to answer any questions members of the committee may have.

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